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EDITORIAL

SOLICITORS have just cause for pride that the standards of entry into their profession are so jealously guarded. Few indeed are the callings which impose so rigorous a preparation upon their members, and there are not many who would wish otherwise. Five years' service under articles coupled with examinations of the standard applied to-day constitute a formidable obstacle to the unsuitable candidate and a considerable guarantee of both character and attainments in those who qualify. It is not to be wondered at, therefore, that serious misgivings have been expressed about the last-minute provision in the Justices of the Peace Act, 1949, permitting the admission of assistants to unqualified justices' clerks to the profession without serving under articles, if certain conditions are satisfied.

The history of this ill-starred enactment begins with an undertaking, given by the Government when the Bill was in Committee on 7th December, to consider the difficulty exposed by Mr. CORLETT, namely, that, as the necessary consequence of imposing the requirement of a professional qualification for appointment as justices' clerk, assistants to unqualified clerks would have no opportunity of qualifying, and yet the supply of professionally qualified men wishing to become clerks to justices would be insufficient. Although this undertaking was given on 7th December we understand that The Law Society was only invited to discuss the proposed amendment with the Home Office on the 12th December—an amendment which had to be tabled that day. Since there was no opportunity for an emergency meeting of the Council, negotiations were perforce conducted by the PRESIDENT, the SECRETARY and one member of the Council. At a late hour on the 12th December agreement was reached on the amendment, which was accepted the next day by the Commons, and on the 15th December by the Lords. In both Houses grave anxiety was expressed as to the wisdom of this course, and the LORD CHIEF JUSTICE, speaking on behalf of the MASTER OF THE ROLLS, described the provision as "an alarming departure." Nevertheless, both Houses accepted the proposal since the alternative was the loss of the whole Bill, and it received the Royal Assent on the 16th December—the first day on which the matter could be formally considered by the Council of The Law Society.

With the merits of the amendment we are not here concerned, but we strongly deprecate the manner in which this imperfectly considered provision has been pitchforked into the Statute Book. Is there any precedent for the passing of legislation affecting professional qualifications without formal consultation with the profession's governing body? The HOME SECRETARY has made it clear that the representatives of The Law Society accepted the proposal with considerable reluctance, and on the understanding that they could not bind the Council, and their dilemma is easily discerned. The Law Society has throughout taken its stand on the principle of the professionally qualified justices' clerk, and in the circumstances intransigence might have endangered that principle.

But was this unfortunate episode necessary? Since when have solicitors' professional qualifications been laid down in legislation concerning justices of the peace? An amendment to the Solicitors Acts by means of a short Solicitors Bill to be introduced next session would have been at once more appropriate and better-advised. There are, after all, ten years to go before the power to appoint unqualified clerks expires, surely time enough for mature consideration of a matter of such public importance. Had the Government given an undertaking to deal with the matter in this way, there is no reason to suppose that the Bill would have been jeopardised.

We forbear to comment on the merits of the amendment because we have no doubt that its obvious difficulties and dangers are receiving the urgent attention of The Law Society and that the necessary safeguards will be suggested in due course. It may well be that these safeguards will require further legislation, in which event the case for more speed and less haste will be all the stronger. Is an unqualified clerk, who obtains admission without articles, to be able to practice as a solicitor for all purposes? Will he be permitted to conduct civil litigation or conveyancing without further qualification? *Ex hypothesi* his principal or employer was not a qualified solicitor and it is most unlikely that the clerk will have had any real experience of matters other than those dealt with in "Stone's Justices' Manual." The profession as a whole will await further developments with the keenest interest.

CURRENT TOPICS

A Solicitors' Negligence Insurance Fund

THERE should be little doubt about the identity of the author of the leading article in the December issue of the *Law Society's Gazette* on Solicitors' Negligence Insurance. He uses his initials "W. C. C." and, if we are right, he is a solicitor whose opinion on insurance matters is among the best. The powerful arguments which he marshals against the establishment of a Law Society Insurance Fund are: (1) the parallel drawn with the Medical Defence Union through which doctors can protect themselves at £1 a head against negligence liability is false, because a solicitor, unlike a doctor, conducts his business largely with the help of unqualified staff, and a solicitor's mistakes are, unlike a doctor's, self-evident: £1 per head of practising solicitors would prove lamentably insufficient; (2) stronger firms would resent their premium being loaded to carry the potential liability of weaker brethren; (3) solicitors prefer individual insurance, because it keeps the matter as secret as possible and avoids having dirty linen laundered before a committee of their colleagues. Solicitors will find in the article a useful and interesting list of the mistakes of commission and omission which amount to negligence, which illustrates the pitfalls into which the most efficient solicitors may tumble. A recent addition to the list occurred in a case before STREATFELD, J., at Devon Assizes, on 18th November, when £2,138 damages were awarded against a solicitor for negligence. In an agreement for the sale of a grocery business to which a post office was attached the solicitor had, without instructions from his client, made provision for the sale of the goodwill of the post office business. The prospective purchasers unsuccessfully applied for the position of sub-postmaster in the place of the vendor, and later repudiated the contract. The business was sold at a lower price. His lordship said that he came to his conclusion with regret.

The Married Women (Maintenance) Act, 1949

THE Married Women (Maintenance) Act, 1949, which only applies to proceedings in magistrates' courts, received the Royal Assent and came into force on 16th December, 1949. It does not affect orders under the Guardianship of Infants Acts nor affiliation orders. Section 1 provides that an order for the maintenance of a wife and children made by a magistrates' court may provide for the payment of £5 per week for the wife and 30s. per week for each child. This provision applies to orders already in existence, whether or not they have already been varied, and a wife may apply to vary an existing order within the new maxima. It does not apply in respect of a maintenance order by which the husband of an habitual drunkard is required to maintain her. Section 2 provides that if an order for maintenance of a child has been made under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, the court may extend it from the age of sixteen until the child is twenty-one if it appears that he will be engaged in a course of education or training after attaining the age of sixteen. Section 5 enables a court which has made an order giving the custody of a child to either spouse to provide for access by the other spouse to that child. Section 6 enables proceedings to be taken under the Acts of 1895 to 1925 not only where the cause of complaint has wholly or partially arisen but also where the wife or the husband ordinarily resides. The cases on the bastardy laws as to "ordinary residence" will, no doubt, be material.

Instructions to Capital Issues Committee: Bonus Issues

IN a parliamentary reply by the Chancellor of the Exchequer on 15th December, a letter dated 13th December to the chairman of the Capital Issues Committee was quoted in full. It refers to the previous instructions of 14th April and states that no alteration of the general instructions then set forth has been made, but only an even stricter interpretation of them than hitherto, in order to ensure that all new issues are

realistically judged with reference to the national interest. The letter continues: "So far as bonus issues are concerned . . . I am now prepared to remove the absolute suspension [imposed on 24th October, 1949] but I would ask your committee not to make any recommendations to the Treasury to permit any such issue unless you are satisfied that each bonus issue in question is necessary to enable the company to continue or to expand its production or to increase the volume of its exports . . . I should consider that, in the case of a company which was exporting a considerable percentage of its production to hard-currency markets, the onus of proving such necessity would be very much lighter, and that consequently your committee could make a favourable recommendation more freely . . . In addition, I must ask that the committee should not, save in exceptional cases, recommend the Treasury to consent to any bonus issue taking the form of preference shares." On this last request the "City Notes" of *The Times* of 16th December pertinently comments that "doubtless this is designed to prevent any contracting out of dividend limitation."

Work of the Probate, Divorce and Admiralty Division

THE extent of recent improvement in the position of the work in the Probate, Divorce and Admiralty Division was explained on 16th December by the PRESIDENT, sitting in the Divisional Court. He said that during the week they had decided several cases in which the trial was held and the order made in the second week of November. He emphasised that point because he had seen it stated that the court was not only expensive but dilatory. The Admiralty work was absolutely up to date, not only so far as the hearings in court were concerned but also so far as the registry was concerned, save for part-heard cases or cases which had been postponed because the witnesses were not immediately available. So far as the Divorce and Probate work was concerned, when the term ended the courts would be hearing cases in the undefended divorce cause list set down on 24th November of this year and in the defended list they would be hearing cases set down on 24th October. So far as the registry was concerned, the appointments were being made in what was the most difficult time of the year—namely, that which succeeds the Long Vacation—within a fortnight of the application, and the taxations were up to date within a matter of days. His lordship said that the present state of business in the Division was not one which need cause the public any anxiety.

The Children Act (Appeal Tribunal) Rules, 1949

NEW rules, to come into operation on 1st January, 1950 (the Children Act (Appeal Tribunal) Rules, 1949), lay down the procedure for appeals against a refusal to register a voluntary home or a proposal to remove a voluntary home from the register. The appeal is to a tribunal constituted in accordance with the Children Act, 1948, Sched. I, but the tribunal is not actually appointed until receipt of the notice of appeal, when the Secretary of State requests the Lord Chancellor and the Lord President of the Council respectively to appoint the chairman and the members of the tribunal. The appellant may appear before the tribunal by counsel or a solicitor or in person or (if the appellant is in partnership) by a partner, or (if the appellant is a company) by a duly authorised director or officer of the company. The Secretary of State may appear and be heard before the tribunal by counsel or a solicitor or by any officer of his department. The hearing of an appeal is to be in public, unless for any reason the tribunal determines that the hearing or any part of it should be in private. The tribunal may require the attendance of further witnesses and may permit the taking of evidence on affidavit. Evidence is not to be rejected on the ground only that it is not admissible in a court of law. The decision of the tribunal is to be the decision of the majority in the event of disagreement, and must be notified by the chairman to the appellant and the Secretary of State as soon as may be after the hearing, together with a brief statement of the reasons for the decision.

DEVELOPMENT IN BARSETLAVIA: A FANTASY

[With apologies to our learned contemporary the JOURNAL OF PLANNING LAW]

Topographical note: Barsetlavia is an imaginary country somewhere on the other side of the Iron Curtain.

The scene opens in a large office. The walls are covered with maps. A large desk occupies a central position. Behind it sits Serge, Planning Officer for a Region of Barsetlavia. He wears uniform. There is a tap on the door and he hastily removes his jack-booted legs from his desk. His assistant, Rudolf, enters.

RUDOLF: There's a citizen outside who wants to see you. He said something about wanting to build a house.

SERGE: Show him in.

Enter a citizen, clutching his cloth cap nervously in both hands. He stands silently shifting from one foot to another.

SERGE: Speak up, man, what's your business?

CITIZEN: I wanted to make some inquiries of you. We're very overcrowded where I live just now. I thought if I could get permission I could build myself a house—nothing big, you understand, because I haven't a lot of money saved up.

SERGE: You'll have less after the Fifth Capital Levy.

CITIZEN: The Fifth...? They said that the Fourth was to be the last and...

SERGE (interrupting): I don't want to hear you whining about your economic difficulties. So you want to build a house, eh?

CITIZEN: Yes, I've always wanted a house of my own, to my own design.

SERGE: I see our friend has not lost his bourgeois conceptions of property and ownership. What's wrong with the dwellings being provided through the energy and drive of our glorious First Police State? Not good enough for you, I suppose, with your grandiose capitalist notions.

CITIZEN (nervously): Well, as a matter of fact, I've never seen any except in the newspapers, of course. So my only hope seems to be if I can get permission to build. I thought perhaps you could tell me how to set about getting the necessary permits, and so on.

SERGE: Ah yes, indeed. Now then, tell me, have you made any study of the Promulgation of 1947 by the Commissar of Town and Country Planning? No? Well, Rudolf, we'd better explain to the gentleman, hadn't we? (He winks at Rudolf, who leans back approvingly.)

SERGE: Before you can build, you must get planning permission and pay the State Development Tax. Do you understand what I mean by planning permission?

CITIZEN: No.

SERGE: I am paraphrasing, of course, but in non-technical language it means my permission. Unless, of course, you have a certain amount of money to spare... you did say you had some savings?

CITIZEN: Yes, a little, but I'd prefer to go the normal way, if it would be cheaper.

SERGE: We'd better not tell him what happened to the last applicant who wanted to "go the normal way," had we, Rudolf? It might put him off, eh?

Now, my good friend, I can see you are a man of perception and intelligence, the sort for whom I reserve something far better than going the normal way about this business. If I were to give you a determination under rule 17 of the Promulgation that what you are doing is *not* Development, you will obtain in return a happy freedom from both form filling and paying the State Development Tax. It's very simple, if not exactly for nothing.

CITIZEN: About how much would it cost?

SERGE: To you, my friend, only about 100 crowns. I see from your eyes that you think I am asking a lot, but I assure you that in the reactionary capitalist states of the West much higher sums are being openly paid for the grant of permission. Here, see for yourself in yesterday's issue of *Lavda* quoting from the English Fascist publication the *Journal of Planning Law*—under the heading "Figures Agreed with the District Valuer."

CITIZEN: I'm sure you're right, but I really think I ought not to impose on your generosity by asking for a special concession.

SERGE: Before you decide, let me explain the usual procedure. Rudolf, get me some forms.

Rudolf goes out and comes back staggering under an enormous box which he lowers gently to the floor. Serge reaches inside and produces a sheaf of papers.

SERGE: Now, first you will require four of the application forms.

The citizen stretches out his hand for the forms.

SERGE: Not so fast, they'll cost you ten crowns each. Next there are the forms for the State Commissariat for Development Tax, two sorts of these, but they're cheaper, only five crowns each. I should think you had better have sixteen of each sort.

CITIZEN: Sixteen? I thought you said I must submit four of each.

SERGE: So I did, but you don't think they are so simple that you can get them right first time, do you? We don't accept them with mistakes. Now about plans. Have you got plans?

CITIZEN: No, I didn't know about that. I've got a builder ready to work for me.

SERGE: No good at all. We must have plans. Rudolf, give the gentleman the address of our friend in the High Street. He will prepare your plans for a mere five or six crowns and he'll fill in all the forms for you for another guinea. It would really pay you to consider it. Where did you say you wanted to build?

CITIZEN: I own a plot of land on the high ground overlooking the Valley of the Rye—it's beautiful up there.

SERGE: No good at all. Absolutely against all planning principles; a piece of sporadic isolated development unrelated to the planned development of a village community. (Walks to wall map.) No, no, Citizen, you'll live *here*, inside the area allowed for development. It's amply large enough to provide for the migration adjustment which will take place in the Registrar-General's natural change projection for 1952. (Aside): Whatever that means.

CITIZEN: But it's next to the river and liable to flooding.

SERGE: Easily overcome by raft construction—it will be a condition of your planning permission that you adopt it.

CITIZEN: Anyway, I don't own any land in the area you pointed out.

SERGE: Oh, there will be no difficulty about that. (Sotto voce to Rudolf): See that he gets my uncle's address before he leaves.

CITIZEN: On second thoughts I'd like to leave this matter over for a while. I think by the time I've bought more land and paid your fees I'll have nothing left to build my house with.

RUDOLF: You don't expect to get planning for nothing, do you?

CITIZEN (backing to door): If you'll excuse me, gentlemen, I'll bid you good-day.

RUDOLF: Your forms, don't forget your forms. You haven't paid for them either. That's eight crowns you owe us, plus a guinea for the consultation. We'll settle up outside.

SERGE: They're all alike. (Reaches for the phone.) Is that the Grand Theatre? Put me on to your Property and Scenery Manager, please. Petroff? Listen here, I have an appeal against that advertisement site I refused near the Station. I have to submit photographs to show that the area is a rural one. Yes, I know it isn't, that's why I'm phoning. Can you spare two or three trees and a good country backcloth for an hour? You can. Good, I'll meet you at the site in five minutes.

He replaces phone, picks up his cap and goes to the door.

J. K. B.

Costs

SCHEDULE II: "INSTRUCTIONS"

WE have dealt with the majority of the detailed items of charges that are provided by Sched. II, but there remains for consideration the fee referred to in the opening paragraph of Sched. II and known by the all-embracing and very elastic term "Instructions." The first paragraph of Sched. II provides for the allowance under the heading of "Instructions" of such fees as may be fair and reasonable having regard to the care and labour required, the number and the length of the papers to be perused, and the other circumstances of the case.

Beyond underlining the fact that the item "Instructions" is one as to which there may well be no two identical opinions as to the amount chargeable in a particular case, the direction quoted above does little to assist one in determining the proper fee in specific cases. "Having regard to the care and labour required" certainly implies that there could very well be two distinct fees for identical work in two matters, although it might be argued that a solicitor is expected to devote the same amount of care to one case as he does to another. Thus, assume that two wills are being drawn, the first a comparatively simple one in respect of an estate of little value, whilst the second is in respect of a large estate of high value involving the creation of numerous trusts, with bequests and devises to alternative persons. So far as the element of care is concerned, the solicitor will be required to exercise as much in the one case as he does in the other, although the amount of labour involved may, of course, differ considerably.

Included under the heading of "Instructions" will come the attendances on the client and others, and any necessary correspondence to ascertain the wishes of the parties. Thus, in the case of a will, the item "Instructions for Will" will include the attendances and correspondence necessary to clarify the client's intentions in relation to his property and its disposal after his death. The work involved may be one attendance, or, on the other hand, it may involve attendances and several letters in order to ascertain the client's wishes, the nature and extent of the estate and the names of the beneficiaries. How much should be charged for the item "Instructions for Will"? Dismissing, for the moment, any other factors, the amount of labour involved would indicate a fee varying between one and several guineas.

To take a concrete case, suppose that the solicitor had two lengthy attendances on the client to ascertain his wishes, and that he wrote three letters in connection therewith and to ascertain the names of the proposed beneficiaries and the nature and whereabouts of the objects of certain bequests, then a fee of about three guineas would not be unreasonable by way of instructions.

The fee for instructions will, however, depend on other factors, as is indicated in the opening paragraph of Sched. II referred to above. There is, in the first place, the element of care, but this, as we have already seen, will not or should not affect the amount of the fee, since, whether the will is short and simple or long and complex, the degree of care exercised by the solicitor in preparing the document will be the same.

Now let us look at the other factors that will affect the fee for instructions. The next one mentioned in the opening paragraph of Sched. II is the number and length of the documents perused. Thus, getting back to our example, we may find that the person making the will is entitled, under a marriage settlement or a will, to exercise a power of appointment over certain property, and it will be necessary, therefore, to examine the documents under which the power is granted in order to ascertain the precise terms thereof.

Again, the client may own property jointly with another or others, and it will be necessary to peruse the conveyances in order to determine the rights of the client in relation to that property and his power of disposing of his share on death.

Now, what is to be charged for perusing these documents? Schedule II, it will be recalled, provides a fee of 1s. per folio

for perusing documents, but this fee was held in *Re Parker* (1885), 29 Ch. D. 199, not to include abstracts of title. Again, in *Re Robertson* (1887), 19 Q.B.D. 1, the fee of 1s. per folio was held not to be applicable to perusing the title deeds of property themselves for the purpose of advising; whilst in *Re Rees* (1881), 58 L.T. 68, the taxing master refused to allow a fee of 1s. per folio for perusing conditions of sale, and allowed instead an inclusive fee of one guinea.

These cases afford little guidance as to the proper amount to include in the item of "Instructions," beyond the negative direction that 1s. per folio is not a proper charge. In the Taxing Office the fee normally allowed for perusing documents to advise and to enable a solicitor properly to conduct a cause or matter is fourpence per folio, and this is a fairly reliable guide as to the proper amount to charge for perusing deeds and other documents in cases such as that cited here for the purpose of estimating a fee for instructions.

Thus, suppose in the present instance that marriage settlements, wills and other documents are necessarily perused in order to ascertain the terms thereof and the rights of the client, and that the total length of these documents is, say, 120 folios, then a charge of two guineas for perusing the documents would be an appropriate fee in the item of "Instructions."

Again, it may be necessary for the solicitor to correspond with and attend on other parties for the purpose of obtaining the loan of or to inspect documents, and the proper charges for this work will have to be included in the item of "Instructions." Necessary letters should be allowed for at the rate of 3s. 6d. each, and journeys for inspecting documents at 15s. per hour, the latter charge being authorised, as we have seen previously, by Sched. II. Thus, assume that in order to obtain the loan of some of the documents about half a dozen letters had been written, and that three hours had been occupied in inspecting other deeds, then a fee of, say, three guineas might reasonably be included in the charge for instructions.

Now, we come to the final direction in Sched. II in relation to this fee for instructions, namely, that regard is to be had to the "other circumstances of the case." The term is not particularly illuminating, but it evidently means that some regard should be paid, amongst other things, to the legal complexity of the matter.

Thus although, as we have seen, no more care may be exercised in drawing a will involving a large estate and including numerous trusts than would be exercised in drawing a similar document in respect of a small estate involving only a simple devise or bequest, the fact remains that the complex nature of the former document would necessitate a good deal more careful consideration of the issues involved and require a greater knowledge of the more intricate details of the law relating to property and wills than the latter document would require.

This is clearly an element which comes under the heading of "other circumstances" which will affect the item of "Instructions," but here one has nothing whatever to guide one as to the fee that is appropriate to this "other circumstance." What would be regarded by one person as an adequate fee for the work entailed in considering the issues involved in a particular case, tracing out and providing against the legal repercussions and producing a framework which will meet adequately the wishes of the client without offending against any rule of law, might well be thought excessive by another person, and grossly inadequate by yet another.

There is no yardstick by which such a fee can be measured and to generalise on such a matter would be both misleading and dangerous. The only guidance that can safely be offered is that a fee should be included which would adequately recompense the solicitor for the skill and labour involved (bearing in mind that there is no tangible evidence of this

aspect of the matter), and paying some regard to the magnitude of the estate.

Thus, one would be justified in charging a higher fee when one is dealing with an estate of, say, half a million pounds sterling, than if the estate is only a matter of one thousand pounds, although the same legal complexities might be common to both. The financial aspect is, undoubtedly, one of the "other circumstances" to which Sched. II refers.

To summarise, therefore, in the example which we have cited, we find that the fee for attendances and correspondence to obtain details of the client's wishes is in the neighbourhood of three guineas, the fee for perusing some documents and inspecting others is another five guineas, a total of eight

guineas, and the next question is the fee to be included in respect of the "other circumstances." Assume that we assess this at something between five and ten guineas, then it is clear that a reasonable fee for "Instructions for Will," in this instance, assuming that the estate is of ample size, would be something between thirteen and eighteen guineas, and a fee of fifteen or even twenty guineas would not be inappropriate.

This example is offered only as a general guide to the manner in which a fee for "Instructions" in the case of a will may be built up, and, of course, the "other circumstances" may greatly affect the fee which can be charged in a particular case.

J. L. R. R.

A Conveyancer's Diary

CAPITAL DISTRIBUTIONS: WHETHER CAPITAL OR INCOME

THE question has sometimes been asked whether the application of the principle, that nothing which is said or done by a limited company or its officials at the time when a capital distribution is made can mould the character in which the moneys paid under the distribution are received by trustees, is affected by the existence of a power in the settlement enabling the trustees to determine whether moneys received by them as such are to be treated as capital or income. This question came near to solution in *Re Harrison's Will Trusts* [1949] Ch. 678, and the answer is apparently in the negative.

The facts in this case were out of the ordinary. Certain premises held upon trust for life interests with remainders over included shares in the C company, one of whose articles of association (No. 67A) provided that the company in general meeting might from time to time resolve that any surplus moneys in the hands of the company representing the moneys received from the realisation of any capital assets of the company or any investments representing the same, instead of being applied in the purchase of other capital assets, might be distributed amongst the members "on the footing that they receive the same as capital" in the shares in which they would have been entitled to receive the same if it had been distributed by way of dividend. In pursuance of this article the company from time to time resolved that surplus moneys received from the realisation of certain of its capital assets should be distributed among its members, and one such distribution was made in 1934. Part of that distribution was made to certain trustees who held shares in the company upon the trusts of a will which directed them to hold the trust premises upon trust to pay the "dividends, interest and annual income to arise therefrom" to a life tenant, with remainders over. The trustees applied to the court for the determination of the question whether the sum received by them as a capital distribution authorised by the article in question should be treated as capital or income, and Clauson, J. (as he then was), concluded that, as the sum received in those circumstances could not be said to be a dividend in the ordinary sense, nor come within the term "interest," nor yet be described aptly as annual income, it should be treated by the trustees as an accretion to capital (see *Re Ward's Will Trusts* [1936] Ch. 704).

In reliance on this decision, and also on a power in the will upon the trusts of which the premises were held to determine whether trust moneys were capital or income, the trustees in *Re Harrison, supra*, applied several sums which they received from the C company by way of capital distributions made under article 67A as capital until 1948, when a further substantial capital distribution was made by the company. In the meantime, however, the decision in *Re Ward, supra*, had been disapproved by the Court of Appeal in *Re Doughty* [1947] Ch. 263.

The facts in the last-mentioned case were slightly different, but the decision proceeded on perfectly general grounds. One of the articles of association of the company there in question

provided for the declaration, in common form terms, of dividends by way of capitalisation of profits by the distribution of paid-up bonus shares or stock, and then went on to provide for the passing of resolutions to the effect that surplus capital moneys or capital profits, whether arising from the realisation of capital assets, or received in respect of capital assets, should be divided among the members of the company by way of capital distribution in proportion to their rights. Pursuant to this power the company declared profits for payment out of realised capital, and a dividend was sent to certain will trustees who held shares in the company as part of a residuary estate upon trust to pay the income thereof to a life tenant. A notice sent with the dividend by the company informed the trustees that an additional dividend or distribution had been declared out of the realised profits of the company, and that as this was a distribution out of capital profits no income tax was deducted, and it was not liable to be included in the taxation returns of the recipients.

Roxburgh, J., followed the decision in *Re Ward, supra*, and held that the whole of the sums received by the trustees by way of capital distribution should be treated as capital and added to the testator's residuary fund. The Court of Appeal, however, reversed this decision, considering it to be inconsistent with *Re Bates* [1928] Ch. 682, and with certain principles of general application laid down by Lord Russell of Killowen in the Privy Council case of *Hill v. Permanent Trustee Company of New South Wales* [1930] A.C. 720. These principles included the following propositions: (1) a limited company when it parts with money is not concerned with its fate in the hands of a shareholder recipient; (2) a limited company not in liquidation cannot return capital to its shareholders otherwise than in formal reduction of its share capital, and all other payments it may make to its shareholders must be by way of dividing profits; (3) moneys so paid, if paid to a trustee, are *prima facie* to be treated as income of the trust, and no statement by the company to the effect that the payments are capital payments, or are to be treated as such, can affect the rights of a beneficiary under a trust comprising shares in the company; but different considerations arise when a company with a power to increase its capital applies undivided profits in paying up new shares which are then allotted to its members. Applying these principles to the facts before them, the Court of Appeal not only came to a different conclusion from that which had been reached by the court below, but expressly disapproved *Re Ward, supra*, on which that conclusion had been based. The utmost effect which the Court of Appeal were prepared to concede to the wording in the article in that case, whereby the distributions made thereunder were declared to be made on the footing that the recipients should receive the same as capital, was that it had been inserted *ex abundanti cautela* to make it clear that these capital distributions should be free of tax.

In these circumstances the authority of the decision in *Re Ward, supra*, could obviously afford no safe guide to

trustees holding shares in the C company upon trust to pay the income thereof to a life tenant in the event of a fresh capital distribution being made by the C company, and this was what happened in *Re Harrison, supra*. This case also came before Roxburgh, J., who held that as *Re Ward, supra*, was no longer authoritative he was bound to conclude that the trustees in the case before him should treat the payments made to them by the C company by way of capital distribution under article 67A as income for the purposes of the settlement, with the result that it became payable to the tenant for life.

Now various matters were pressed upon the learned judge in favour of the opposite view, as, for instance, the fact that the articles of the C company did not permit it to increase its capital and that in consequence the only way in which it could distribute money to its shareholders impressed with an obligation to treat it as capital was by resolution under

article 67A. These arguments were unsuccessful. But the point that the trustees were expressly authorised by the will, independently of anything in the company's constitution, to treat a sum received as trust money either as capital or as income, at their discretion, does not appear to have been expressly taken. But if not expressly taken the point was before the court, and the conclusion which must be drawn from the result of the case is that trustees who receive a sum by way of capital distribution in circumstances which, in the ordinary way, would carry an obligation to treat the sum as income under the principles enunciated in *Hill's case*, would not be justified in applying it as a capital accretion merely by the presence in the trust instrument of a power to determine whether moneys received by them as trustees should be treated as capital or income.

"ABC"

Landlord and Tenant Notebook

FLATS, AMENITIES AND DEROGATION FROM GRANT

IN 1940 the plaintiff in *Kelly v. Battershell and Another* [1949] 2 All E.R. 830 (C.A.), took a flat the approach to which passed other flats; in 1949 she and anyone visiting her had to pass through an hotel. This roughly indicates her grievance: "you take my house when you do take the prop that doth sustain my house," as Shylock put it; and it is just the sort of grievance which makes tenants, who can find nothing affecting the matter in the terms of their tenancies, invoke the doctrine of derogation from grant. In this case there were further allegations of breach of an implied covenant and infringement of a common scheme, which I will deal with in another article; this week I propose to confine myself to the claim for derogation, the facts relevant to which were as follows.

The flat was the fifth floor of a London, W.2, house; in 1940 there was, it will be appreciated, little demand for such, but the fourth and third floors were then occupied as flats, the second and first were occupied as a dwelling, while the ground floor and basement were occupied by the then landlord and used by him to carry on "a kind of club." The agreement she and the then landlord made was not reduced to writing. According to her evidence he said, in the course of negotiations, that all the others were occupying their flats as private dwelling-houses and that it was his intention to maintain the house as such, a statement to which she attached much importance; she would not, she deposed, have taken the flat if the other parts of the house had been business premises or usable otherwise than as private dwellings. Except, perhaps, for the fact that the flat was not self-contained, if separate, when she took it, and the plaintiff's evidence that she herself agreed to use it as a private dwelling only, I do not think that anything else that happened at that stage affected the issue of derogation from grant.

At the end of 1946 the landlord sold the house to the defendants, who conducted an hotel in the house next door, the house next door but one, and the house next door to that; in 1947 all the other floors beneath the plaintiff's residence, except perhaps the first, were used by the hotel as an annexe; by June, 1948, the rest of the house had become part and parcel of the hotel.

The derogation issue was decided against the plaintiff, both in the county court and the Court of Appeal, by reference to one authority, *Browne v. Flower* [1911] 1 Ch. 219, which contains a clear statement of the scope of the doctrine. I am not suggesting that others ought to have been cited, but I think it may be useful, for "Notebook" purposes, to mention a few which concern landlords and tenants of flats and similar properties. For when sets of demised premises have no roofs of their own, but a roof which protects them all is retained by the landlord of all, the scene might be said to be set for a possible derogation from grant.

An attempt was made, in *Robinson v. Kilvert* (1889), 41 Ch. D. 88 (C.A.), to apply the doctrine to the following

facts: the plaintiff took a tenancy of the ground floor of a building belonging to the defendants, who knew that he proposed to use the premises for storing paper and twine; but the only thing that might suggest this in the written agreement was the description of the undertaking, "paper and twine merchants." His evidence was that when he went over the premises with one of the defendants before taking them they went into a cellar in the basement (this in connection with an examination of the strength of the floor) where he noticed a boiler, and that he then remarked that it would never do to use it as this would dry his paper, whereupon he was told that it would never be used again except for lighting the lessors' warehouse with electricity (this was denied). A few months after the term had begun, the boiler was used by the defendants for the purpose of supplying warm and dry air to the upper part, where they manufactured paper boxes. Heat escaped to the ground floor and damaged the plaintiff's paper, which was of a particular kind that could not resist heat. While basing his claim mainly on alleged breach of covenant for quiet enjoyment he argued that the heat kept up had made it impossible for him to carry on his business on the premises demised to him with knowledge of the intended use. It was held that in these circumstances derogation from grant and breach of implied covenant for quiet enjoyment came to the same thing, and that the claim failed because the evidence did not show that the premises had been made unfit for storing paper, but only for storing a particular kind of paper.

In *Allport v. Securities Corporation* (1895), 11 T.L.R. 310, an interim injunction was granted to the tenant of an upper flat to restrain landlords from permitting a staircase to be removed, an operation which they had commenced with a view to improving accommodation for a club in the lower part of the premises and which would leave him a means of less direct access by a larger staircase. His tenancy agreement expressly gave him the right to use the staircase in process of being removed, and for this reason the decision is not a pure example of derogation from grant. In *Odell v. Cleveland House, Ltd.* (1910), 26 T.L.R. 410, in which a tenant of a ground floor shop sought redress for loss and damage occasioned by the reconstruction of the upper part, the cause of action relied upon was nuisance and nothing was said about the grantor-grantee relationship.

Then came *Browne v. Flower*. The building which figured in that case was divided and sub-divided in an unusual way, boundaries being vertical as well as horizontal. The plaintiffs were tenants of a flat consisting of eight rooms on the ground floor, overlooking a garden belonging to the landlord. Other rooms on that floor were, together with rooms on the first and second floors, twelve in all, already let to a Mrs. L (whose holding is described as a flat, though it would not satisfy the definition now to be found in the Housing Act, 1936, s. 188 (1)). This flat also possessed windows

which overlooked the garden. Two years after the plaintiffs' tenancy had commenced, Mrs. L. proposed dividing her "flat" into two smaller entities, one to be approached via a staircase from the garden. She obtained the required licence from the second mortgagee by sub-demise of the lessors, she being in receipt of the rents and profits, by informing her that the plaintiffs had no objection, which was not true. Thereupon a staircase was made, and the flat to which it gave access was, together with the staircase, sub-let. The action was brought against the mortgagee and the sub-tenant. The evidence showed that the plaintiffs' privacy had suffered. Parker, J., held that, while the law recognised no easement of privacy, the implications usually explained by the maxim that no man could derogate from his own grant did not stop short with easements. If the grant was made for a particular purpose,

the grantor might not use land retained by him in such a way as to render the land granted *unfit or materially less fit* for that purpose. But that was all: there was no authority for the proposition that the grantor might not (unless this was bargained for) use the land retained for a lawful purpose which might affect the amenities of the premises the subject-matter of the grant. It was for this reason that the claim failed.

And in *Kelly v. Battershell* the claim for derogation from grant failed for the same reasons, the court applying the principles stated by Parker, J., to the facts that the plaintiff had suffered interference with convenience and with amenities: the flat was still habitable; the sustaining prop had not gone.

R. B.

HOUSE PURCHASE AND WAR DAMAGE

In our contemporary, the *Estates Gazette*, of 10th December, 1949, under the above heading, a letter from Mr. J. E. Fraser, A.A.I., of Norbury, London, S.W.6, was published expressing concern that many people purchase houses and subsequently find that the war damage claim on the property is closed, and that, despite the existence of what is indisputably war damage, the War Damage Commission refuse to reopen the claim. Mr. Fraser stated that "these folk purchase in the belief that, if there is any outstanding war damage, they can put in a claim and all will be well." "Now," continued Mr. Fraser, "who is responsible for protecting the purchaser . . . or at least for acquainting him fully with the situation? If a professional surveyor is not employed, surely the purchaser's solicitor should probe the matter. Unfortunately, a number of solicitors omit to take any such action beyond getting the file number of the claim. Many people, justly indignant, consider this is negligence on the part of their solicitors."

With the greatest of respect to Mr. Fraser, we are not certain of the exact nature of his complaint against solicitors, and find difficulty in concluding that a case of negligence is likely to exist. It appears that the kind of case to which he makes reference is one in which a war damage claim has been made and the claim settled. The wording of the letter suggests that the purchaser does not know of the outstanding war damage at the time of the purchase, but discovers it later. In such a case there can be no blame attached to the purchaser's solicitor if further war damage is found. If the purchaser did not know of it when he bought, how can his solicitor know of it? And how can the purchaser be protected? Surely only by a thorough examination of the property by a surveyor before contract. It is for a purchaser to decide whether such examination is necessary and whether he is prepared to pay for it.

If, on the other hand, Mr. Fraser refers to cases in which war damage is known by the purchaser to exist, the position is somewhat different. Presumably the purchaser will inform his solicitor of the fact (the solicitor can scarcely be expected to anticipate the possibility and to inquire, unless, possibly, the area is known to him to have been heavily damaged). In the cases in question a cost of works payment will be appropriate. Assuming that a proper claim has been made, this payment will be made to the purchaser if he carries out the repairs and there is no need for any special provision in the contract or conveyance. If war damage is known to exist, any claim is certain to be discussed by the vendor and purchaser in the course of negotiations. If the purchaser consults a solicitor before entering into a binding contract and informs the solicitor of the war damage, then the solicitor should ask whether a claim has been made and warn the purchaser that it is now usually too late to claim. It is well known that for over eighteen months the War Damage Commission have accepted notification of damage only in exceptional circumstances. It is then for the purchaser to decide whether to buy. We suspect that in many cases the solicitor is not consulted until after the contract has been signed for the purchase of the property without reference to the war damage. If it is then found that there has been no claim or that a claim has been settled, and the purchaser is disappointed because his anticipation of recovering the cost of works payment proves incorrect, one cannot see what his solicitor can do about it, or how any blame can attach to the solicitor.

Compared with the total number of houses being sold, the number subject to war damage not repaired must be small. Consequently, one can scarcely now expect a solicitor to inquire about such damage on every conveyance of a house. Just as the

purchaser must satisfy himself of the condition of the house in respect of ordinary repairs, so he must satisfy himself on the matter of possible war damage. On the other hand, if the purchaser tells his solicitor that there is unrepaired war damage, then we would agree that the solicitor should inquire about the claim. In fact the Council of The Law Society have already considered the point, and in the *Law Society's Gazette*, November, 1948, p. 187, they drew attention to the risk that a vendor of war damaged property not fully reinstated may have submitted to the War Damage Commission a schedule of remaining war damage, or even have agreed that the work of reinstatement has been completed. In such event the purchaser will be unable to obtain a payment from the Commission except in respect of items included in the schedule (if any). The Council advised that solicitors acting for purchasers of such property should make the following preliminary inquiries of the vendor on the draft contract:—

"(1) whether any admission has been made that war damage repairs already carried out on the property have fully reinstated it; if not,

(2) whether any schedule of outstanding war damage repairs has been supplied to the War Damage Commission, and, if such a schedule has been supplied,

(3) whether a copy can be produced."

For these reasons no blame could, in our opinion, attach to a solicitor unless (1) he knew that there was outstanding war damage, and (2) he was consulted before a binding contract was made. If he did know, and was consulted in time, he should certainly follow the matter up by appropriate inquiries, or should warn the purchaser so that he may make further inquiries if he thinks them necessary. Whether a failure to take one of these steps would amount to negligence giving rise to an action for damages is doubtful. Probably the question depends on the facts of each case; no doubt the duty of the solicitor is higher where the purchaser is inexperienced and is known to have made no inquiries himself than where the purchaser is able to look after himself and, for instance, negotiated through an estate agent who could be expected to look into the war damage claim. If Mr. Fraser has experience of a number of cases of hardship, we would suggest that probably in most of them the solicitor was not informed of the war damage or was not informed until after a binding contract was signed. Once a contract has been signed (assuming it does not make special provision on the matter) the purchaser must take the property in its existing state, making the best of any war damage claim which may have been put in. Although we are inclined to agree that a solicitor consulted before contract owes a duty to advise the purchaser against committing himself by a contract not carrying out his known intentions, once the purchaser has bound himself by contract the most which can be done is to get information about the claim. There is nothing the purchaser's solicitor can do to help him whatever that information shows (neglecting, of course, any question of fraud or misrepresentation) and there is no ground for alleging that, in the absence of special instructions from the client, the duty of investigating title includes a duty to get that information.

The view outlined above seems to be very much in line with the contents of a letter written by Mr. G. C. D. Joyce, A.A.L.P.A., of West Wickham, Kent, and published in the *Estates Gazette* for 17th December, 1949, at p. 551. Mr. Joyce's opinion is that a prospective purchaser should ascertain if there is any outstanding war damage claim, the responsibility being on the surveyor if one is employed. He then writes, "If a surveyor is not engaged then the proposed purchase being 'Subject to Contract' places

the responsibility upon the solicitor acting for the purchaser, as the benefit of any open claim must pass to the purchaser." It is apparent that Mr. Joyce's remarks assume that the purchaser's solicitor will be told of the war damage. If this is the case, our

only comment is that it is not wise to assume that the proposed purchase will be "subject to contract" when the purchaser first consults a solicitor. Too often a binding contract is signed without legal advice.

J. G. S.

HERE AND THERE

BEST WISHES

A HAPPY Christmas to all our readers, pausing, we hope, for a moment in the scrambling obstacle race to keep abreast of the new legislation of the paper age and nibbling a festive morsel at the equitable board of the Welfare State. A happy Christmas to others too, for instance, to the judges and public prosecutors of Eastern Germany engaged in a four months' competition to make the law more generally understood (and over there, to go by the reports of judicial proceedings in Eastern Europe, it must take some understanding). Scoring: 20 points for a public meeting, 15 points for a lecture; extra points for full houses and lively discussions. Prize-winners to be announced on 1st May. (Try it in the K.B.D.) A happy Christmas to the judges of the mobile courts in Czechoslovakia, which are to go into fields and factories to settle disputes on the spot so that "working people involved in trials will not neglect their jobs." There's full employment for you. No day off to give evidence in your grandmother's breach of promise case. Motto for counsel: "We will fight them in the fields; we will fight them in the factories." Side note: Progress is always biting its own tail. Abyssinia has had street-corner courts for centuries. And mediæval England had its pie-powder (or "dusty foot") courts. A happy Christmas to the lady who has made a record in road accident case damages with an unprecedented judgment for £16,450. (If the litigation lottery begins to offer prizes like that it may soon begin to rival the Pools in popularity.) One effect of her accident, she said, was a deterioration of temper, illustrated by her having blacked the eye of her partner in an interior decorating business. L.C.J.: "A little exterior decoration." A happy Christmas with an additional glow of righteousness to the solicitors whose £5 a year subscriptions produce £70,000 annually for just such contingencies as those produced by Mr. Hignett's parties. His clients (whose Christmas will be the happier for that knowledge) may perhaps meditate on a change which the late G. K. Chesterton was already noticing some years ago "from a middle class that trusted a business man to look after money because he was dull and careful, to one that trusted a business man to get more money because he is dashing and worldly. It has not always asked itself for whom he would get more money or whose money he would get."

TRIP ABROAD

It's the Christmas vacation now, so let's take a little holiday abroad. Switzerland: Did you hear about Auguste Farimet, the confidence trickster, who recently got out of Sion prison?

The first thing he did was to break into a convent and steal the robes of a Sister of Mercy. In these he went to the Valais Canton where he told the community of another convent near Bouveret that he had been sent to gather alms in the neighbourhood. The good nuns charitably provided food and lodging for the stranger, who day after day scoured the villages around for pious contributions, under the very noses of reverently saluting police officers. He covered the ground so thoroughly that he wore holes in his shoes and that was the beginning of the end, for a benevolent cobbler, who offered to mend them free, was puzzled at their size and style. He mentioned it to the authorities who kept an eye on the nun with the big feet and the police caught up with their quarry in a café, absorbing a somewhat improbably liberal refreshment of local wine. Back he went to Sion. Berlin: Everyone everywhere is trade union conscious and the beggars of Berlin, organised by an ex-locksmith, ex-prisoner of war, have started one with a subscription of 20 per cent. of takings. Facilities include provision of suitable disguises, and the working of the beats in rotation, so that the police shall not take to memorising over-familiar faces. Sick benefit is provided. The collecting of cigarette butts has become an established industry with processing and packing for resale done by the union. Competition is to be eliminated with all the beggars brought in as members and no break away unions tolerated. One assumes that if the union ever went in for "strike action" against anyone, it would do so in the most literal and direct sense of the words.

TAIL PIECE

PARIS is a next door neighbour and even on the present trivial allowance one can still manage to spend a day or two there a year. If you can go on a professional or cultural mission you can make it more. Have any of the cultural missionaries ever noticed the statues in the Law Courts there? In the central hall the general rendezvous is the monument of Beroyer who courageously but unsuccessfully defended Marshal Ney, charged with treason and the war crime of abetting Napoleon's return from Elba. It is rather cryptically decorated with a tortoise. A young female figure done in the eighteen-twenties represents Justice. The sculptor's original intention was a nude, but royalty thought otherwise and the last of the Bourbons were as obstinate as their pre-Revolutionary predecessors. The sculptor compromised, but got half his own way. Clothed and austere, the front view of the symbolic figure respectfully conformed to the monarch's standards; the rest is all the artist's own work and one of the curiosities of sculpture.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL]

Rent Tribunals—"Contract"—Tenancy/Letting

Sir,—A professional friend has had an unfortunate experience before a rent tribunal, which emphasises the limitations of tribunals and the feeling that lawyers often have that they could do more justice in the case if they had the freedom of cross-examination and testing of witnesses on oath, such as would be allowed in a court, and that, where an injustice has been inflicted, there may be no power to put the matter right.

One presumes that the tribunal have the power to decide whether a particular occupation is a "contract" within the meaning of the Act, and, if the tribunal finds that it is, and exercises its jurisdiction to grant security of tenure, there is no appeal or remedy when it is afterwards found that they were completely misled by lies of one of the parties. As is known, the parties do not give evidence on oath, and there may be no question of perjury.

In the case in question (in which I was not acting), my friend and his wife were heard and other witnesses on their behalf, and it was submitted by counsel that the applicant to the tribunal had no "letting" and that there was no "contract," and that, in fact, what happened was that the applicant's wife was called in to nurse my friend's relative and she later volunteered to do both day and night duty if her husband was allowed to come, and they were given a room, food and use of part of the premises. Later they declined to go.

Notice was served by my friend's solicitor stating, in effect, that they were trespassers, but the applicant took the case to the

tribunal and, although counsel tried to cross-examine as to credit, he was limited by a member of the tribunal, who said—although she did not wish to stop his questions—that they were so used to cases they were able to judge whether a person was telling the truth or not. Certain questions were, however, held "irrelevant."

The "rent," which was paid for a couple of weeks, was, my friend's side said, towards the applicant's food, and not for a tenancy of any kind.

The tribunal apparently disbelieved my friend and witnesses, found that the food was not a substantial part of the rent, and confirmed the alleged rent and, therefore, gave security of tenure.

Now, having won the case, the applicant says that he is sorry he lied to the tribunal, but now he could get out within a few days, if he had a substantial sum of money which he has to pay to obtain a flat which is available!

Apparently there is no appeal and, even if the case was one for certiorari, the expenses would probably be as much as the amount required to give up possession. One wonders what should be done to remedy the tribunal's order. I think that readers may have similar experiences, and on the analogy of *R. v. Recorder of Leicester, ex parte Wood* (1947), 91 SOL. J. 370, certiorari should be applicable, the tribunal having come to a wrong conclusion owing to the fraud of the applicant, but it would be easier and cheaper if the tribunal could cancel its own decision.

"LEX"

NOTES OF CASES

CHANCERY DIVISION

CHARITABLE BEQUEST: FOR THE DEFENCE OF UNITED KINGDOM FROM HOSTILE AIRCRAFT

In re Drifill; Harvey v. Chamberlain

Danckwerts, J. 17th November, 1949

Adjourned summons.

In a will dated 25th April, 1916, the testatrix, a citizen of the United Kingdom, made a gift for the purpose of promoting "the defence of the United Kingdom from the attack of hostile aircraft."

DANCKWERTS, J., said that the present was a case clearly falling within the well-known authorities in which gifts for the armed forces of the Crown were held to be valid charitable bequests. The case was covered by *In re Stephens* (1892), 8 T.L.R. 792, and *In re Good* [1905] 2 Ch. 60. The purposes of the bequest were obviously limited to the defence of the United Kingdom of which the testatrix was a citizen. The bequest was a valid charitable gift.

APPEARANCES: J. L. Arnold, J. Monckton (Drucis & Attlee); Hon. Denis Buckley (Treasury Solicitor).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WAR DAMAGE: SHORT TENANCY

In re Nos. 38-40 Windmill Street, St. Pancras, and In re War Damage Act, 1943

Vaisey, J. 8th December, 1949

Adjourned summons.

The summons was taken out by the applicants, B and F, as owners of house and shop property which, in December, 1940, had been so damaged by enemy action as to become a total loss, for payment out of court to them of £1,018 compensation. The respondent, H, claimed, as lessee of the premises, that he had a proprietary interest therein, and that he was entitled to the moneys. The property was demised in 1931 by the owners to H's father for a term of five years at £220 a year, subject to the usual covenants. The lessee died in 1935 and in that year a deed was executed (not described as a lease) between the owners and H, the effect of which was, after reciting the earlier lease, to extend the existing term of five years for another seven years, or twelve in all, at an increased rent of £230 a year. The question raised was whether H was a lessee for a "short term" of seven years or less, or for a term of twelve years, in which latter case he had a proprietary interest.

VAISEY, J., referred to s. 12 (1) of the War Damage Act, 1943, and said that by s. 123 a proprietary interest in hereditaments included, besides the fee simple, any tenancy other than a "short tenancy," which meant any tenancy granted for seven years or less, and the question was whether this was or was not a "short tenancy." Did the deed of 1935 create a new term of seven years, or was it an extension of an existing term to more than seven years? Reference had been made to s. 149 of the Law of Property Act, 1925, which abolished the conception of *interesse termini* and provided that all terms of years should take effect from the date fixed for the commencement of the term without actual entry. This altered the previous law as stated by Swinfen Eady, J., in *Lewis v. Baker* [1905] 1 Ch. 46. Whatever the description of the deed, the real situation was that the applicants had granted a lease for five years and before that term had expired an arrangement was made between the applicants and the lessee's successor to extend the term from five to twelve years. The result of that was that the respondent's tenancy was not a short tenancy, but a tenancy for twelve years, and therefore it was a proprietary interest within the Act. The respondent was entitled to the sum paid into court, which was not the whole of the value payment but the value of his proprietary interest, assuming he was entitled to any. He would order the sum to be paid out to the respondent and the applicants must pay his costs. The matter was one of some difficulty and he would grant a stay of execution for fourteen days in case the applicants desired to appeal.

APPEARANCES: D. H. McMullen (Scadding & Bodkin); G. Brian Parker (Bridges, Sawtell & Co.).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

INCOME TAX: BREWERS' RENTS

Tamplin & Sons Brewery, Brighton, Ltd. v. Nash

Croom-Johnson, J. 24th October, 1949

Case stated by Income Tax General Commissioners.

By r. 3 of Cases I and II of Sched. D to the Income Tax Act,

1918, among expenses which may not be deducted in computing income for income tax purposes are: "(a) ... expenses, not being money wholly or exclusively laid out ... for the purposes of the trade ..." Under para. (c) no deduction is permissible in respect of rent or annual value of any premises or part of premises not used for the purposes of the trade. In *Usher's Wiltshire Brewery Co., Ltd. v. Bruce* (1915), 6 Tax Cas. 399, it was held that where a brewery company let premises to a tenant at a rent lower, because he was tied, than that which the company paid for them, the difference was deductible in computing the company's liability to tax. Section 17 of the Finance Act, 1940, provided that there should be no deduction in future of annual value of the amount of rent where the premises were held under long leases. For some time after that Act was passed it was not realised that premises in respect of which the appellants, a company of brewers, were being allowed to deduct the difference between the rents which might have been received and the lower rents actually received from the tenants because tied were subject to long leases. The Inspector of Taxes, having discovered that the premises were subject to long leases, made additional assessments by way of cancelling the deductions which had wrongly, so he contended, been made in respect of the premises. The General Commissioners confirmed those assessments, and the company now appealed.

CROOM-JOHNSON, J., said that it seemed to him that, as soon as Parliament enacted that the deduction of rents paid under long leases was no longer permissible, the question of deducting the difference between the rents paid and the rents received disappeared. It was, however, contended for the company that, quite apart from s. 17 of the Act of 1940, they were entitled to a deduction which was in respect not of rent paid but of the difference between the rent which might notionally be received by them for the premises and the lower rent which the tied tenant was actually paying. It was contended that the company could put their case that way because of certain observations of Lord Sumner in *Usher's case*, *supra*, said to be to the effect that wherever it could be shown that brewers had let their premises to tied tenants at a low rent instead of to free tenants at a rack rent in the open market, the brewers had forborne to recover the money which they could have received, and that, having so forborne for business reasons, they could claim a deduction in respect of the sums forgone. The Act of 1918 did not seem to provide any place into which such a claim could be fitted. Rule 3 of the Cases I and II rules applied primarily to disbursements: here no money had been laid out at all: there was merely a notional figure arrived at by pointing to what the company might have done but had not. There was no head under r. 3 under which this claim could fall. Lord Sumner's *dictum*, relied on in *Usher's case*, 6 Tax Cas., at p. 437, was that "a trader who utilises, for the purposes of his trade, something belonging to him ... which he could otherwise let for money, seems to me to put himself to an expense for the purposes of his trade." Lord Sumner went on to say that in his opinion the rent forgone, either by a letting of the brewers' own houses to tied tenants at less than a rack rent, or by a letting to such a tenant of premises at a rent lower than that paid for them by the brewers, was money expended within the Cases I and II rules. Lord Sumner was there concerned with money which had actually been expended on balance, and not, as was the case here, with a notional sum. His observations had been criticised by Lord Russell of Killowen in *Lowry v. Consolidated African Selection Trust, Ltd.* (1940), 23 Tax Cas. 259, at p. 295. He (Croom-Johnson) did not agree with the argument for the company that Lord Loreburn, L.C., in *Usher's case*, was (6 Tax Cas., at p. 420) saying that money forgone by letting at reduced rents when no loss had actually accrued in money was a deductible expense for income tax purposes. He was concerned with the actual loss or deficiency found to exist in that case. He (his lordship) did not regard himself as compelled by Lord Sumner's *dictum* to hold that a sum which had never come into existence and had never been paid, a loss which had never accrued in any accountancy sense, was a deductible expense. The General Commissioners were accordingly in his opinion right in holding that the deduction claimed must be regarded as a claim to deduct rent paid under the leases, which deduction was barred by s. 17 of the Act of 1940. Appeal dismissed.

APPEARANCES: King, K.C., Heyworth Talbot, K.C., and Oliver Shaw (Godden, Holme & Co.); Grant, K.C., and Hills (Solicitor of Inland Revenue).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

DIVISIONAL COURT

JURISDICTION: APPLICATION FOR REHEARING

Prince v. Prince

Lord Merriman, P., and Ormerod, J. 14th October, 1949

Application under r. 36 of the Matrimonial Causes Rules, 1947, for a rehearing of a petition for divorce heard by Judge Fraser Hamilton at Liverpool.

The husband's petition, which alleged adultery, was dismissed. The wife was granted a decree *nisi* on her cross-charge of cruelty. Her defence to the allegation of adultery was positive evidence of an exculpatory character as well as a mere denial. In particular, she relied on her statement that, on the occasion when she was said to have been harbouring the co-respondent in the house, a Mrs. Jones was in the house minding the children. Mrs. Jones was not, however, called as a witness, but she was traced, after the trial, by the husband's solicitor, who obtained from her a sworn statement to the effect that the wife had admitted her association with the co-respondent. By r. 36 (1) the husband was entitled to a rehearing before the Divisional Court if "no error of the court at the hearing is alleged." Otherwise (r. 36 (2)), his remedy was in the Court of Appeal.

LORD MERRIMAN, P., said that Mrs. Jones' sworn statement was clearly such as to justify the ordering of a rehearing by one court or another. Cases which clearly came within the rule were those where there had been, deliberately or inadvertently, failure to bring the party now wishing to be heard before the court—cases of failure or imperfection of service. In *Peek v. Peek* [1948] P. 46, the Divisional Court went a step further, and decided that, in a case where the petitioner had suppressed material evidence and in effect had put a false case before the court, it had jurisdiction to order a rehearing. He (his lordship) had there said that the question was whether the allegation made against the decision was that the court had gone wrong on the materials before it, or that it had gone wrong because evidence on a vital matter was concealed from it. That test was formulated in that way because of *Petty v. Petty* [1943] P. 101, and was approved in the Court of Appeal in *Peek v. Peek* [1948] W.N. 343. Tucker, L.J., there said that there might be a good deal to be said for the proposition that where the application was really founded on the suppression of evidence the rehearing might be granted on that ground irrespective of whether or not the judge took the right course on the material which was presented to him. The point was left open. He (his lordship) was afraid of opening the door of r. 36 to the class of case which might be appropriate for application to the Court of Appeal for a new trial. The argument for the husband (for which there seemed to be ground, though he (his lordship) expressed no concluded opinion) was that if the principle were once accepted that deception of the court, suppression of material facts, was the antithesis of going wrong on the materials before the court, it would really make no difference, provided that the course of the trial warranted it, whether the suppression, fraud, or conspiracy was committed by the petitioner in presenting the case or by the respondent in rebutting it. The Court of Appeal, in *Peek v. Peek*, *supra*, had been careful to apply the test or antithesis referred to only to the issues there raised, and not to lay down a universal test. He (Lord Merriman, P.) saw no essential distinction between the present case and *Petty v. Petty*, *supra*, for he thought that the applicant here was saying that the commissioner had believed the wrong set of witnesses and that if he had had Mrs. Jones' evidence he would have discredited the wife and her witnesses. That being so, *Petty v. Petty*, *supra*, was the governing decision, and it must be for the Court of Appeal to say that they (the Divisional Court) had imposed limitations on their jurisdiction which were too strict, and to define anew, if they were minded, the limitations which must necessarily be imposed at some point or another in order to avoid an overlap of jurisdiction between that court and the Court of Appeal.

ORMEROD, J., agreed. Application refused.

APPEARANCES: *Crispin and Starkey* (Chamberlain & Co., for Stanley Williams & Elsbys, Bootle); *R. H. Forrest* (Jaques & Co., for T. R. Jones, Liverpool).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT

JUSTICES: HEARING TREATED AS NULLITY

Espin v. Espin

Lord Merriman, P., and Ormerod, J. 19th October, 1949

Appeal from Kesteven justices.

The appellant wife's summonses for neglect to maintain and desertion having come up for determination, the justices, after

discussion with her solicitor, agreed to adjourn the hearing of them to a named day. The respondent husband, who was not represented, was just outside the court when the arrangement was made, but he was duly informed of it. On the appointed day the husband failed to appear owing to a misunderstanding, and an order in the wife's favour was made on the summonses. The next day he went to the court, when it was proposed, in consultation with the clerk to the justices, that the hearing of the previous day should be treated as a nullity and that another hearing should be arranged. That, with the consent of the wife's solicitor, was done, and the summonses were reheard, both parties being present, and were dismissed. The wife appealed.

LORD MERRIMAN, P., said that the original adjournment ordered while the husband was outside the court-room was contrary to s. 16 of the Summary Jurisdiction Act, 1848. It was, however, an irregularity which could have been cured. The subsequent course of events gave rise to greater difficulty in that the justices were *functus officio* after the first hearing. It was not in the parties' power to agree that the order made on that hearing should be regarded as a nullity. The order should, strictly speaking, have been brought before the Divisional Court, on a consent order, to be set aside. The effect of what had been done was to discharge the order made on the first hearing since there could not otherwise have been a rehearing. The justices could not, however, agree to treat their order as a nullity and so give themselves jurisdiction in a case which they had already decided. The Divisional Court could only treat the second hearing as a nullity, and accordingly could not entertain an appeal by the wife against the order made on it even though she might appear to have a *prima facie* case on the merits. The wife must accordingly take out fresh summonses.

ORMEROD, J., agreed. Order accordingly.

APPEARANCES: *Geoffrey Lane* (Kingsford, Dorman & Co., for W. L. Kitchen, Lincoln).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DECREE OF PRESUMPTION OF DEATH: JURISDICTION

Wall v. Wall*

Pearce, J. 9th November, 1949

Summons (adjourned into open court) in a wife's petition for a decree of presumption of death and dissolution of marriage.

In her petition the wife stated that she verily believed that she was domiciled in New South Wales, Australia. The parties last cohabited in 1917 in England, when the husband embarked on a troopship bound for Australia. Except for a letter written by him while on board ship, she had not seen or heard of him since. By s. 8 (1) of the Matrimonial Causes Act, 1937: "Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the court to have it presumed that the other party is dead and to have the marriage dissolved, and the court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death and of dissolution of the marriage."

PEARCE, J., said that, in the occasional cases where the person presumed dead was alive, the safeguard (the decree of dissolution provided in s. 8) would take effect and an existing marriage would in fact have been dissolved by decree of the court. There was a fundamental difference between deliberately dissolving a marriage which the court knew to exist, and dissolving *ex abundanti cautela* a marriage which the court presumed not to exist. Although there must always be some risk that the decree might alter status, owing to the party presumed dead being in fact alive, the risk in each case should be a small one. In practice the alteration in status, if it occurred, would not be severe, since, where a husband's contact with his wife was so tenuous that his wife and the court presumed him to be dead, it was unlikely that he or the community of his domicile would be strongly conscious of his married status. Many wives were not very certain where their husband's domicile was, and were not in a position to conduct experimental litigation abroad. It was the intention of the Legislature that they should be able to participate in the benefits of the Act. It certainly seemed just, and in the public interest, that they should have their status as married women or widows established by the court if that could properly be done. To allow them to do so seemed more in accord with the tenor of the Act. Relief under s. 8 was not primarily or in essence dissolution of marriage, and was not intended to be. Residence was the test; since the husband was, *ex hypothesi*, presumed dead, it could not have been his residence which was intended to

* See now Law Reform (Miscellaneous Provisions) Act, 1949.

be the test, but that of the wife. Direction that the petition should be filed.

APPEARANCES: *R. J. A. Temple (Malcolm Slowe & Co.)*; *Colin Duncan (Treasury Solicitor)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ALTERATIONS IN WILL: WHETHER ORIGINAL TEXT "APPARENT"

In re Itter, deceased

Ormerod, J. 2nd December, 1949

Probate action.

The matter in issue arose out of a codicil to the will of the deceased. At the time of her death it bore slips of paper which she had pasted over the amounts in certain clauses of the codicil. On those slips of paper the testatrix had written certain other sums of money. Those she had initialled, but her signature to the slips was not attested as required by the Wills Act, 1837. Letters of administration had been granted to the defendants, with the will and codicil annexed, in March, 1947, the slips of paper being admitted to probate as blanks. The will and original codicil were duly executed. Expert evidence was given that the writing underneath the slips of paper was only decipherable by means of photographs taken by infra-red rays, unless the slips themselves were removed from the codicil. Photographs of the original writing, taken by infra-red rays, were produced at the trial, and the question was whether that writing could in the circumstances be said to be "apparent" within the meaning of s. 21 of the Wills Act, 1837, whereby "No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will. . . ."

(*Cur. adv. vult.*)

ORMEROD, J., said that he accepted the expert's evidence that he was only able to find out what was beneath the slips of paper by means of the photographs. But he (his lordship) could not accept the contention that the words so discovered were "apparent" within the meaning of s. 21. The word "apparent" must mean "apparent" on the face of the instrument itself. If the words could be read by looking at the document itself, then they were "apparent" within the meaning of the section; but if they could only be read by producing the photographs, they were not "apparent," though they might be discoverable (as they had been in the present case). "Discoverable," however, was not the word used in the section. As for revocation, if the testatrix had pasted the slips of paper on the codicil with the intention of revoking the legacies completely, there would, of course, be a revocation; but if the slips were pasted over the amount of the legacies with the intention of substituting other amounts, then the original legacies would not be revoked until there was an effective alteration of the codicil. The only evidence available was that of the document itself. It was to be inferred that the testatrix had only intended to revoke the part covered by the slips of paper if the new bequests were effectively substituted. The original grant of administration would be revoked, and the will and codicil, in the form in which the words were originally, would be pronounced for in solemn form, and a new grant made to the defendants.

APPEARANCES: *Middleton, K.C.*, and *Sophian (Mount, Sterry and Co.)*; *Tyndale, K.C.*, and *R. J. A. Temple (Kingsford, Dorman & Co., for Shepheards & Bingley, Kensington)*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PRACTICE NOTE

PROBATION OFFICER'S STATEMENTS: PROCEDURE

Rich v. Rich

Lord Merriman, P., and Ormerod, J. 31st October, 1949

LORD MERRIMAN, P., on the hearing of a husband's application for discharge of a maintenance order, emphasised the importance of observance of ss. 4 and 5 of the Summary Procedure (Domestic Proceedings) Act, 1937. The question at issue had been whether the husband had made a *bona fide* offer to resume cohabitation, and the probation officer had made an oral statement to the court concerning interviews which he had had with the parties, although he was not sworn, examined or cross-examined, and the requirements of s. 4 of the Act of 1937 were not complied with. The limits on the intervention of probation officers during the hearing of a case had been laid down in *Higgs v. Higgs* [1941] P. 27. The court was bound to be influenced by a probation officer's statement of his conclusions as between the parties. The calling of the officer as a witness to give evidence on oath was quite a different matter.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PREVENTIVE DETENTION AND CORRECTIVE TRAINING: PRINCIPLES APPLICABLE

R. v. Barrett

Lord Goddard, C.J., Croom-Johnson and Lynskey, JJ.
14th October, 1949

Application for leave to appeal from conviction and sentence.

The applicant was convicted at Liverpool quarter sessions of possessing housebreaking implements by night and attempted shopbreaking, and was sentenced to five years' preventive detention.

LORD GODDARD, C.J., giving the judgment of the court, said that the applicant was very properly convicted. With regard to sentences of preventive detention and corrective training, it did not appear to the court that, where a sentence of five years' imprisonment would be an appropriate sentence, there was any good reason for giving five years' preventive detention instead of that five years' imprisonment. True, s. 21 (2) of the Criminal Justice Act, 1948, provided: "If the court is satisfied that it is expedient for the protection of the public that he should be detained in custody for a substantial time, followed by a period of supervision . . . the court may pass, in lieu of any other sentence, a sentence of preventive detention for such term of not less than five nor more than fourteen years as the court may determine." The object of s. 21, however, was really to provide for the case of habitual criminals—to enable the court to give a longer term of detention than in the ordinary way it would of imprisonment. If the court happened to think that the proper length of time for which the prisoner was to be detained was, say, five years, that was no reason why it should give him five years' preventive detention instead. A sentence of five years was well justified here, and, if there had been no such thing as preventive detention, the proper sentence would, or might have been, five years. If the proper sentence of imprisonment would have been, say, three years, but the prisoner's past record made it appear desirable that he should have a longer period of detention, that would have been a proper case for putting him into preventive detention, perhaps for a considerable period, for the intention was that the rigours of preventive detention would not be so severe as those of imprisonment, at any rate for the whole period. Preventive detention should, in the opinion of the court, be kept for cases where the court thought it right to detain a man in custody for a long period for the protection of the public—for a longer period, that was, than it would feel justified in imposing if it were merely sentencing him to imprisonment. Therefore, where the appropriate sentence would be four or five years' imprisonment in any event, there did not seem to be any good reason for ordering preventive detention for that period. Very much, but not quite, the same considerations applied to sentences of corrective training: corrective training was intended for what might be called extended Borstal treatment. No man could any longer be sent to Borstal training who was over the age of twenty-one years. If persons of twenty-one years or over were sent there for corrective training, then, if the prisoner's record showed that his tendency was to lead a criminal life, it was just as well to make the sentence of corrective training of substantial length, bearing in mind that the usual remission would be granted if the prisoner behaved himself. It was not of much use to give a sentence of corrective training of a length which would not enable real reform to be attempted. Courts should remember that preventive detention should be kept for cases where it was thought necessary in the interests of the public to give a longer sentence than would be given of imprisonment. If in a particular case it were thought that a sentence of detention for five years, but no more, was in any event the correct sentence, there seemed very little reason for imposing preventive detention and not imprisonment. The court did not think it necessary in the instant case to alter the sentence of preventive detention to one of imprisonment; but it hoped that these considerations would be borne in mind in future. Application for leave to appeal against conviction and sentence refused.

APPEARANCES: None.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PRACTICE NOTE

PREVENTIVE DETENTION

Lord Goddard, C.J., Hilbery and Lynskey, JJ. 18th October, 1949

LORD GODDARD, C.J., delivering a prepared statement of the court on the subject of preventive detention, said that since the beginning of the sittings the court had had before it more than eighty cases, including those in that day's list.

The majority had been appeals against sentence, and, in a substantial number, the sentence passed had been one of preventive detention. A common sentence of that description had been one of five years, and the Court of Criminal Appeal felt that in many instances courts were passing that class of sentence in cases where, but for the substitution of imprisonment for penal servitude, the sentence would have been penal servitude for the same number of years. It was not the intention of the Criminal Justice Act, 1948, to substitute preventive detention for the old sentence of penal servitude. If a court were of opinion that a given number of years was the appropriate sentence, it did not by any means follow that, because the prisoner had the requisite number of previous convictions, the sentence should be one of preventive detention rather than of imprisonment. Still less did that follow because of a report from the Prison Commissioners that the prisoner was suitable for that form of sentence: their report was merely as to his suitability should the court deem it right to pass such a sentence.

The Court of Criminal Appeal had already said that preventive detention ought to be awarded only in cases where, before the Act of 1948, there would probably have been a charge and finding that the prisoner was an habitual criminal. Before the Act, it would be remembered, as, in such a case, at least three years' penal servitude had first to be given, the total length of detention would have been at least eight years. Preventive detention ought to be passed only where prolonged detention was necessary

for the protection of the public. It might well be that, when a sentence of five years' imprisonment would ordinarily be passed, the court might consider that the particular circumstances required an additional term because of the criminal proclivities of the offender, and so give seven, ten, or even more years' preventive detention. Possibly if a sentence of two or three years would ordinarily be regarded as appropriate, preventive detention for five years might, in some cases, be deemed justifiable; but the Court of Criminal Appeal was of opinion that preventive detention should be regarded as an exceptional sentence and not one to be given merely instead of imprisonment. Where it was given, it ought to be for a long period. As a rule, five years would only be appropriate in the case of a man of advanced age who habitually committed crime—it might be of a petty nature—who must therefore be kept in custody, but who, it might be hoped, would not end his life in prison. There had been very few cases of that nature before that court in which it had disapproved of the length of sentence, but several in which, in its opinion, ordinary imprisonment should have been given and not preventive detention. If the latter sentence continued to be given at the present rate the Prison Commissioners might be put into difficulty in finding the requisite accommodation in the places set aside for that form of detention.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

* Reporter's note: cf. *R. v. Barrett*, ante, p. 805.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills and Measures received the Royal Assent on 16th December:—

Adoption of Children
Air Corporations
Armed Forces (Housing Loans)
Auxiliary and Reserve Forces
British North America (No. 2)
Coal Industry (No. 2)
Criminal Justice (Scotland)
Distribution of German Enemy Property
Election Commissioners
Electoral Registers
Festival of Britain (Supplementary Provisions)
Fife County Council Order Confirmation
India (Consequential Provision)
Justices of the Peace
Law Reform (Miscellaneous Provisions)
Local Government Boundary Commission (Dissolution)
Married Women (Maintenance)
Married Women (Restraint upon Anticipation)
National Health Service (Amendment)
National Parks and Access to the Countryside
Nurses (Scotland)
Parliament (pursuant to s. 2 of the Parliament Act, 1911)
Parliament Square (Improvements)
Patents
Public Works Loans
Registered Designs
River Great Ouse (Flood Protection)
Shoreham Harbour
Stanley's Charity (West Bromwich) Scheme Confirmation
Telegraph
Vehicles (Excise)
War Damaged Sites

Benefices (Suspension of Presentation) Measure, 1946 (Amendment) Measure, 1949

Reorganisation Areas Measure, 1944 (Amendment) Measure, 1949.

HOUSE OF LORDS

A. DEBATES

On the Committee stage of the **War Damaged Sites Bill**, LORD TEYNHAM moved an amendment to cl. 4 to ensure that if a local authority should erect a permanent building or works on a war-damaged site and should then wish to acquire the land compulsorily, it should make use of the relevant statutory provisions for that purpose, and not take advantage of the Bill by taking a lease for ten years and thus avoiding payment of the proper price for ten years. LORD KERSHAW, for the Government, said it was very unlikely that a local authority would erect any but temporary buildings on such sites because of the insecurity

of tenure. If the amendment were agreed to there might be litigation, e.g., as to whether gardens were "permanent" or not. He gave an assurance that the Minister would not sanction the loan which would be necessary for the erection on such a site of any building of a permanent and substantial nature. LORD LLEWELLIN thought this undertaking obviated the need for any insistence on the amendment, but LORD BUCKMASTER could not see why, therefore, anything would be lost if the amendment was not inserted. The amendment was withdrawn.

Next, LORD LLEWELLIN moved an amendment to cl. 7. As things stood at present under the Schedule to the Town and Country Planning (General Development) Order, 1948, planning permission was not required for the restoration of buildings to the same cubic content and external aspect as before the damage. He wanted to preserve this position, whereas he understood that the present wording of cl. 7 altered it. LORD KERSHAW said he was advised that planning permission was in fact required for such operations. It was a common fallacy to think that it was not required under the Schedule referred to. [This is so, but the order itself grants the planning permission for the matters referred to in the Schedule.] However, the fairest thing would be to accept LORD LLEWELLIN's amendment, and if it was not acceptable in another place, steps would be taken there. This was done.

A Government amendment, which was agreed to, empowers the Minister to refuse to order the local authority to vacate the site when development which the owner proposes consists merely of temporary use for twenty-eight days in any one year for purposes specified in the Town and Country Planning (General Development) Order, 1948. LORD TEYNHAM next moved to extend, from 24 hours to 72 hours, the period of notice to be given by a local authority before it demanded admission to a site. Some of these sites had been derelict for years and he could not see the urgency now. LORD KERSHAW said this power only operated where the site had been allowed to deteriorate so much as to be offensive or when some sudden nuisance arose, as by the deposit of noxious rubbish. In either case rapid action was justified, and there was a provision for compensation if any damage was done. He further pointed out that this clause did not give power to take possession, but merely to go on to a site and clear away rubbish or remedy a nuisance. There was no ulterior motive in this. But LORD HAWKE thought it was another example of the executive demanding more power than was really necessary. The amendment was withdrawn.

LORD TEYNHAM then moved an amendment to cl. 11 (War Damage Payments), which clause sought to amend s. 13 of the War Damage Act, 1943, which had enacted that in certain circumstances the War Damage Commission could make a value payment instead of a cost-of-works payment. Clause 11 modified the requirements and conditions under which the Commission could do this, but it contained no safeguard for the owner of the site, for the Commission no longer had to be

satisfied that it was the wish of all the owners of the property that the damage should not be made good. The Commission changed to a value payment simply if they considered that the damage would not be made good within a reasonable time. A reasonable time was not defined in the Bill. Difficulties of getting planning permission and of assessing development charge might result, in the eyes of the Commission, in unreasonable delay. He thought cl. 11 might react very harshly on the owners of war-damaged sites. It might mean that instead of the full cost of restoration of war damage being paid out of the cost-of-works payment, owners would have to be content with a much lower payment than a value payment plus 40 or 60 per cent. under s. 11 of the War Damage Act, 1943.

LORD KERSHAW said he had come to the conclusion that the amendment would merely remove from the Bill the requirement that the owners of property should be consulted. The 1943 Act already gave the Commission power to alter the payment quite apart from the consent of the interests concerned. It was not reasonable that war damaged property, for the early restoration of which all the necessary consents had been given or could be obtained, should be held up indefinitely. LORD LLEWELLIN agreed that they could not have the offer of a cost-of-works payment and planning permission and allow the owner to keep the site derelict indefinitely, especially when it was known he had the money to do the work, but he did not think the Bill as drafted met the situation. The amendment was, however, withdrawn.

In conclusion a new clause was inserted making it an offence, punishable with a fine of £50, to deposit rubbish or waste material on war-damaged sites. LORD LLEWELLIN thought it was about time such steps as these were taken to prevent people dumping anything they liked on these sites.

[8th December.

HOUSE OF COMMONS

A. DEBATES

The Committee stage of the **Justices of the Peace Bill** was opened by Mr. OSBERT PEAKE moving an amendment designed to provide that a justice might act for a place which was within fifteen miles of either his residence or his place of business or employment. The ATTORNEY-GENERAL said the Bill provided for residence only because a justice would normally be at home in the evenings and thus available for the signing and witnessing of documents. If he were qualified on the other ground he might not be in the area either in the daytime or in the evenings. Mr. PEAKE withdrew his amendment.

Dealing with cl. 2 (Mayor as a justice), Mr. ROYLE said it was altogether wrong that a man having been selected for one purpose should automatically be selected for another. Mr. H. HYND said the only reason mayors were appointed to the bench was because the appointment as J.P. was regarded as some sort of honour. That was an entire misconception. Mr. PANNELL thought enough harm had been done to local government in the last few years without the kind of wounding references they had heard that day. When one compared some magistrates with the mayors of some cities and towns it was positively insulting to say that the mayor did not come to the office with vastly more qualifications. The mayor alone came to the office free of the devious procedure of the advisory committees. Mr. CHUTER EDE said it had been decided to retain these officers as justices because it was felt that the office they held was worthy of recognition. He knew of no bigger gamble than the appointing of a magistrate in any event. The mayor would not in future be chairman because it was undesirable that a newly appointed magistrate should step immediately into the chair. If an unsuitable mayor was elected the Lord Chancellor could prevent him from sitting on the bench. He thought the worst anomalies in this matter had been removed. The clause was agreed to.

Mrs. BRADDOCK put a question on the effect of cl. 3 (Disqualification in certain cases of justices who are members of local authorities). Would a magistrate who was a member of a local authority be precluded from dealing with a case in a juvenile court where children were accused of breaking into property belonging to the local authority, in particular where the prosecution was brought, not by the local authority, but by a police officer? If so, it would be very difficult in areas in which the members of a juvenile court attended on a rota. It would be difficult to arrange that no justice who was a member of the local authority should be present. Mr. JANNER said that as things stood at present an advocate sometimes had the embarrassing duty of asking a justice to retire from the bench,

which immediately created prejudice on the part of the other magistrates. The ATTORNEY-GENERAL expressed the view that where the prosecution was brought by the police and not as a result of any decision taken by the local authority or any of its committees, there would be no disqualification under the Bill. He added that, of course, this clause did not take the place of the ordinary common law rules relating to bias. There might be cases where, although not disqualified, it would be better if the magistrate did not sit. But where, for example, as a result of a decision by the Education Committee a prosecution had been launched against a parent, then it would be wrong and contrary to the spirit of the clause for the magistrate to sit. He felt that it was better to have a hard and fast rule on this point. In reply to further questions by Mrs. BRADDOCK, Sir HARTLEY SHAWCROSS said that *ad hoc* committees of local authorities were legally committees of the authority, and magistrates who sat on them were disqualified, and the same applied to a co-opted member of a local authority.

[6th December.

When the Lords' amendments to the **Adoption of Children Bill** were considered, Mr. YOUNGER said he would move an amendment (in substitution for that proposed by the House of Lords) which was the result of much consultation and prolonged efforts to deal with the question of consent. The 1926 Act required the consent of certain persons to the making of an adoption order. That referred to the state of mind and was to be distinguished from the evidence of consent which might take the form of a document signed some time previously. The Court of Appeal had held that before making an order the court must be satisfied as to the existence of consent at the time of making the order. The position was the same under the Bill. Moreover, the 1926 Act required a consent to a specific adoption order, not consent to adoption in general.

Two types of difficulty had arisen which the Bill sought to meet. The first was that on adoption the identity of the adopting parents ought to be kept secret, but on the other hand the mother was entitled to some knowledge of the type of home to which she was handing over her child. The second difficulty was that sometimes the child was taken back after the adopters had grown fond of it, and this might have a bad effect on the child; on the other hand the mother had to have full time to reconsider her decision. The Lords had rejected their solution of the first difficulty by means of a general consent to adoption on the ground that this was to encourage parents to neglect their responsibilities. Secondly, they had rejected the proposal that a consent to adoption should become irrevocable at some time before the hearing of the final order.

Since then there had been many representations. The new proposals were an attempt to find a reasonable solution by preventing an irresponsible "snatch-back" of the child, whilst keeping intact the right of the natural parents. Rules would be made to preserve the anonymity of the adopting parents. The Bill itself would provide that the natural parents could not, once an application had been made to the court for an adoption order, take the child away from the adopting parents in whose custody it would by then be, without leave of the court. New rules would be added so that the natural mother knew exactly how to make application to the court, and she would almost certainly get the child back if she convinced the court of her genuine intention to care for it. Even if she were refused, she could still refuse her consent to the making of the final adoption order.

[5th December.

B. QUESTIONS

Mr. LINDGREN gave the following details of expenses in connection with the Prestwick air disaster: Crown counsel's fee £173 5s.; Ministry of Civil Aviation counsel's fee £200; Air Ministry counsel's fee (including expenses) £220 10s.; Ministry of Civil Aviation solicitor's fee and expenses (estimated) £268; Air Ministry solicitor's fee and expenses (estimated) £210.

[14th December.

Sir STAFFORD CRIPPS stated that since the beginning of 1948 the Board of Inland Revenue had launched one successful prosecution as a result of information furnished anonymously, and seven as a result of information furnished by persons who gave their names.

[14th December.

Mr. CHUTER EDE stated that the Working Party on Hackney Carriage Laws had been appointed to examine the law relating to hackney carriages with special reference to the need for modernising those provisions which were now obsolete and to make recommendations. The Acts of Parliament extended over more than 100 years and their provisions and the judicial decisions

thereon had not previously been reviewed as a whole. This task must therefore take some time. [15th December.]

Mr. SYDNEY SILVERMAN asked how many young persons absconding from approved schools had been imprisoned in the last six months without any charge having been preferred against them, and by what legal authority such imprisonment was authorised, and how many were young persons who had never been charged with or convicted of any offence. Mr. CHUTER EDE replied that in the last six months twenty-two girls over seventeen years of age were lodged in prison pending his decision as to whether they should be charged with absconding. Most of them were imprisoned with persons on remand or awaiting trial or in hospital. The prison governor was authorised to take charge of the absconder by the school managers under para. 13 of Sched. IV to the Children and Young Persons Act, 1933. Section 82 of the Criminal Justice Act, 1948, had made it necessary for the school managers to get the consent of the Secretary of State before charging a person with absconding. He would take the opinion of the law officers as to the legality of such imprisonment pending the preferring of a charge. He agreed that prison was a most undesirable place in which to detain such young persons, but the difficulties of accommodation were such that he had no choice. [15th December.]

Mr. JOHN LEWIS asked whether, in view of public disquiet, the Home Secretary would introduce legislation to make the doping of racehorses an indictable offence. Mr. CHUTER EDE replied that he had no reason to suppose that the practice referred to was of such a nature or of such proportions as to justify him in proposing legislation adding new offences to the criminal law. [15th December.]

STATUTORY INSTRUMENTS

Administration Order (Amendment) Rules. (S.I. 1949 No. 2275.)
Draft Attendance Centre Rules, 1949.
Bexhill Water (No. 2) Order. (S.I. 1949 No. 2262.)
Draft Coal Mines (Mining Qualifications Board) General Regulations, 1950.
Control of Building Operations (No. 14) Order. (S.I. 1949 No. 2278.)
Control of Paper (No. 17) Order, 1940 (Revocation) Order. (S.I. 1949 No. 2293.)
Electricity (Central London Electricity Accessories) (Transfer) Order. (S.I. 1949 No. 2288.)
Feeding Stuffs (Rationing) (General Licence) Order. (S.I. 1949 No. 2260.)
Foel Trunk Road Order. (S.I. 1949 No. 2265.)
Footwear (Supply, Marking and Manufacturers' Prices) (No. 2) Order, 1949 (Amendment No. 2) Order. (S.I. 1949 No. 2286.)
Gas (Staff Compensation) Regulations. (S.I. 1949 No. 2289.)
Glucose (Amendment) Order. (S.I. 1949 No. 2261.)
Gretna—Stranraer—Glasgow—Stirling Trunk Road (Castlehill Diversions) Order. (S.I. 1949 No. 2281.)

Injuries in War (Shore Employments) Compensation (Amendment) Scheme. (S.I. 1949 No. 2285.)

Lands Tribunal Rules. (S.I. 1949 No. 2263 (L.29).)

These rules lay down the procedure to be followed in proceedings before the Lands Tribunal. The tribunal will sit in such places in the United Kingdom as the President may determine, and will, with certain exceptions, sit in public. Evidence may be given orally or by affidavit, and the parties may appear in person or by counsel or solicitor or "by a representative appointed in writing."

Midwives (Amendment) Rules, Approval Instrument. (S.I. 1949 No. 2272.)

Milk and Meals (Amending) Regulations. (S.I. 1949 No. 2280.)

National Coal Board (Overseas Activities) Order. (S.I. 1949 No. 2292.)

Oils and Fats (No. 2) Order. (S.I. 1949 No. 2291.)

Planning Payments (War Damage) Regulations. (S.I. 1949 No. 2255.)

These regulations came into force on 12th December, 1949. They are consequential upon the Planning Payments (War Damage) Scheme, 1949 (see 93 SOL. J. 794). They prescribe the manner and the period in which claims under that scheme should be made, the particulars to be supplied and the evidence required. Provision is also made that a claim for payment under the Claims for Depreciation of Land Values Regulations, 1948, in respect of a scheme to be made under s. 58 of the Town and Country Planning Act, 1947, shall, if the claimant gives due notice, be treated as a claim under these regulations, and vice versa. The procedure for determination of amounts of payments and for the settlement of disputes is also set forth.

Public Health (Acute Poliomyelitis, Acute Encephalitis and Meningococcal Infection) Regulations. (S.I. 1949 No. 2259.)

Railway Freight Rebates Scheme, Modification Order. (S.I. 1949 No. 2274.)

Retail Drapery, Outfitting and Footwear Trades Wages Council (Great Britain) Wages Regulation (Holidays) Order. (S.I. 1949 No. 2270.)

Retail Drapery, Outfitting and Footwear Trades Wages Council (Great Britain) Wages Regulation Order. (S.I. 1949 No. 2271.)

Retail Furnishing and Allied Trades Wages Council (Great Britain) Wages Regulation Order. (S.I. 1949 No. 2276.)

Retail Furnishing and Allied Trades Wages Council (Great Britain) Wages Regulation (Holidays) Order. (S.I. 1949 No. 2277.)

School Premises Amending Regulations. (S.I. 1949 No. 2279.)

Stopping up of Highways (Staffordshire) (No. 1) Order. (S.I. 1949 No. 2297.)

Stopping up of Highways (West Sussex) (No. 1) Order. (S.I. 1949 No. 2266.)

War Damage Contribution (Procedure) Regulations. (S.I. 1949 No. 2284.)

Ware Potatoes (Restrictions on Sales) (Revocation) Order. (S.I. 1949 No. 2273.)

NOTES AND NEWS

Honours and Appointments

The year of office of the Queen as treasurer of the Middle Temple expires at the end of the year, and Sir HENRY MACGEAGH, K.C., deputy treasurer, has been elected treasurer of the society for 1950.

Mr. Justice VAISEY has been appointed treasurer of the society of Lincoln's Inn for the year commencing 11th January, 1950.

Mr. PAUL SANDLANDS, K.C., has been appointed treasurer of the Inner Temple for the year 1950, and Lord Justice BUCKNILL reader for the Lent Vacation.

The King has been pleased to approve that Mr. JOSEPH ROBERT MCKENZIE WILLIS, C.M.G., secretary to the Board of Inland Revenue, be appointed a commissioner of Inland Revenue in succession to Mr. William George Esterbrooke Burnett, C.B., who retired from the public service on the 30th November.

The Bishop of London (Dr. J. W. C. Wand), at the request of Mr. H. T. A. Dashwood, who has acted as legal secretary to successive Bishops of London for over twenty-five years, has agreed to his being relieved of this work, though he will remain Joint Registrar of the Diocese. The Bishop is appointing Mr. G. D. HEATH as his legal secretary in the place of Mr. Dashwood as from 1st January next.

Alderman ROBERT GRIFFITH, solicitor, of Blaenau Festiniog, Meirionethshire, has been appointed clerk to the Corwen magistrates, in succession to the late Mr. T. R. Jones, solicitor, of Bala.

The Lord Chancellor proposes to appoint Mr. R. G. E. BOULTON the registrar of the Sunderland, Seaham, South Shields and the West Hartlepool county courts and district registrar of the Sunderland, South Shields and West Hartlepool district registry, to be, in addition, registrar of the Consett, Gateshead, Hexham and North Shields county courts, but to release him of the registrarship and district registrarship of the West Hartlepool county court and district registry as from the 24th December, 1949.

The Colonial Office announces the following appointments in the colonial legal service: Mr. R. H. HICKLING to be assistant Attorney-General, Sarawak; Mr. D. J. JONES to be Resident Magistrate, Uganda; Mr. F. A. BRIGGS (Registrar, Supreme Court, Federation of Malaya) to be Puisne Judge, Federation of Malaya; Mr. B. A. DOYLE (Solicitor-General, Fiji) to be Attorney-General, Fiji.

Personal Notes

Mr. Charles J. Clark, solicitor, of Doncaster, was married recently to Miss Joan Champion, of Doncaster.

Mr. Phillip Evans, solicitor, of Bournemouth, addressed members of Bournemouth Round Table recently on "The Conduct of Civil and Criminal Proceedings."

As a member of a club brains trust at Birmingham Rotary Club luncheon on Monday, Mr. Kenneth Walker, solicitor, said

there would be no higher standard of honesty among people at large until there was a widespread return to religion. He did not necessarily think that breaking regulations was dishonesty because there were so many of them these days.

Mr. G. E. Philippo, of Winnowsty House, Winnowsty Lane, Lincoln, who is assistant solicitor at Lindsey County Council, has been appointed District Commissioner of the Lincoln and District Boy Scout Association.

One of the oldest solicitors in Wigan, Mr. John Preston, who has been in practice in that town for over fifty years, has now retired. For about thirty years he has lived at Euxton, near Chorley, Lancashire.

Miscellaneous

The Central Land Board announce that they are to issue shortly an explanatory leaflet concerning the Planning Payments (War Damage) Scheme (S.I. 1949 No. 2243) and Regulations (S.I. 1949 No. 2255). The leaflet gives guidance on who should claim and how claims can be made and examples of how assessments and payments work out in practice.

The Minister of Town and Country Planning has confirmed the compulsory purchase orders made by the Central Land Board in respect of land at Stanmore, Middlesex, and Cheetham Hill, Manchester.

THE SOLICITORS ACTS, 1932 TO 1941.

On the 8th December, 1949, an order was made by the Disciplinary Committee, constituted under the Solicitors Acts, 1932 to 1941, that the name of WALTER JOSEPH McGLUE, formerly of No. 66 Bishop Road, St. Helens, in the County of Lancaster, be struck off the roll of solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry. On the 8th December, 1949, an order was also made by the Disciplinary Committee that the name of FRANCIS CHARLES BENNETT, of No. 16 Carlisle Mansions, Westminster, in the County of London, be struck off the roll of solicitors of the Supreme Court.

Wills and Bequests

Mr. G. J. Fraser, solicitors' clerk, of East Molesey, left £6,051.
Lt.-Col. W. A. V. Churton, solicitor, of Broughton, left £79,454.

OBITUARY

MR. H. W. FORTUNE

Mr. Harold W. Fortune, solicitor, of Harrogate, died on 6th December, at the age of 68. He was admitted in 1906.

MR. T. A. GAINSFORD

Mr. Thomas Alan Gainsford, solicitor, of Looe, died on 13th December, aged 69. He was admitted in 1904.

MR. E. G. HARVEY

Mr. Ernest Gilmour Harvey, solicitor, of Newcastle, died on 2nd December. He was formerly Under-Sheriff of Northumberland for more than twenty-five years.

BRIG.-GEN. G. KYFFIN-TAYLOR

Brig.-Gen. Gerald Kyffin-Taylor, C.B.E., solicitor, of Birkenhead, died recently, aged 86. He was admitted in 1884.

MR. W. PATERSON

Mr. Willis Paterson, solicitor, of Abergale, died on 9th December, aged 67. He was a past president of the Manchester Law Society, and was senior partner of Messrs. Dendy and Paterson, of Manchester. He was admitted in 1904.

MR. T. P. PERKS

Mr. Thomas Probert Perks, barrister-at-law, died on 7th December, at Hebden, near Grassington, aged 89. Admitted a solicitor in 1881, he practised in Halifax until his call to the Bar by Gray's Inn in 1891.

MR. H. W. SKILLINGTON

Mr. Harold William Skillington, solicitor, of Leicester, died on 6th December, aged 65. He was admitted in 1907, and was honorary librarian of the Leicester Law Society.

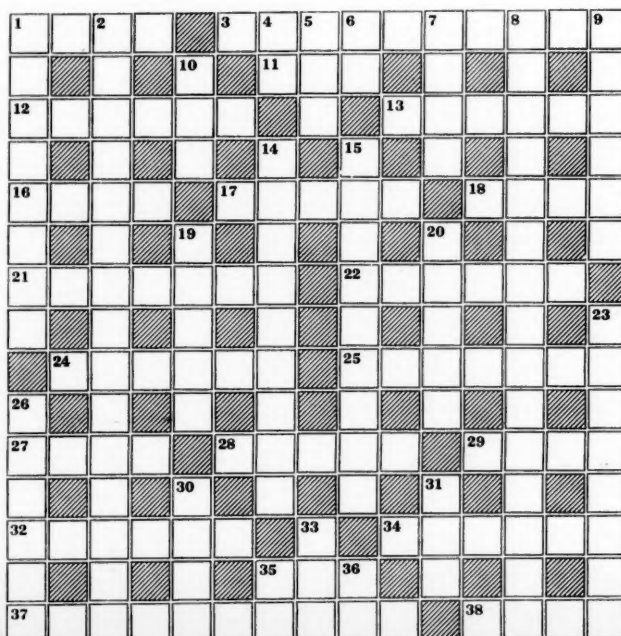
CHRISTMAS CROSS-EXAMINATION

[No prizes are offered for solving this puzzle, the solution to which will be published next week]

CLUES

ACROSS

1. A puzzling alternative (4).
3. The learned old Doctor makes a luxuriant beginning (10).
11. Powderless market court (3).
12. A fair rent in diminution becomes a disreputable affair (6).
13. Precedes recovery as a rule (6).
16. Learned hostelry (4).
17. Seek favour or flavour (5).
18. Were equity's also sweet? (4).
21. They voted for the jury (7).
22. The proverbial choice of two evil parties? (6).
24. Can you penetrate one's Scottish disguise? (6).
25. Royal grant—or it may lead to a binge, it seems (7).
27. No starters, by the look of it, from this African port (4).
28. Sequence (5).
29. This lady apologised vicariously for breaking an engagement (4).
- 32, 31 down. The railway is curtailed before the confusion (4, 2, 3).
34. Not always a "gentlemen's" agreement (6).
35. A litigant of convenience (3).
37. Simon deceased (7, 3).
38. Dark blue Goddess (4).



CLUES

DOWN

1. Ultimate duty of an Assize Judge (8).
2. Second thoughts about a fundamental English doctrine (15).
- 4, 10. Accident to a Shaw play (5).
5. The tally of thirsty carpenters (3).
6. My leader, beside the still waters (2).
7. Refer a bill in this case (4).
8. Are these punishments now nationalised? (15).
9. Some trustees seem to be addicted to this cult (6).
10. See 4.
14. Profane Chancery Clerks (9).
15. The servant off duty behaved like a lamb — judgment for the master (9).
19. See 35 down.
20. Literary work of a Lord Chancellor (5).
23. It sounds as if they might have no faith in industry (8).
26. A covenant sang in Leicester Square? (6).
30. Apt for rigging or for warrant of arrest (4).
31. See 32 across.
33. The fabulous Patricia (3).
- 35, 19. Early short title (2, 5).
36. Saxon river (2).

J. F. J.

SOCIETIES

At the sixty-fourth annual general meeting of the DERBY LAW SOCIETY, Mr. H. S. Rees, of Derby, was elected President. The following officers were also elected: Vice-President, Mr. C. R. Lynn, of Matlock; Hon. Treasurer, Mr. A. V. Nutt, of Derby; and Hon. Secretary, Mr. Alan Haldenby, also of Derby.

Mr. D. H. Mace has been elected President of the INCORPORATED LAW SOCIETY OF LIVERPOOL, and Mr. J. W. T. Holland Vice-President.

At the thirteenth annual meeting of the MACCLESFIELD LAW SOCIETY, held under the chairmanship of Mr. H. Mottershead, officers for the current year were elected as follows: President, Mr. H. Mottershead; Vice-President, Mr. S. D. Potts; Hon. Secretary and Treasurer, Mr. F. Blunt; Hon. Auditors, Mr. John F. May and Mr. Walter Isaac; committee, Messrs. H. F. Langstaff, G. C. Kirk, H. Bennett, G. W. Wain, junior, and Francis W. Milne.

The President, the Vice-President and the Council of THE LAW SOCIETY gave a dinner on 15th December at the Law Society's Hall. Those who accepted invitations included the Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, Lord MacDermott, Lord Justice Tucker, Lord Justice Asquith, Sir Hartley Shawcross, Mr. Justice Hodson, Mr. Justice Slade, Mr. Justice Wynn Parry, the Hon. Sir Albert Napier, Sir Thomas Barnes, Mr. G. Russell Vick, Sir Henry MacGeagh, K.C., Sir Eric Beckett, Sir Theobald Mathew, Sir Nazeby Harrington, Sir Clement Hallam, Mr. H. A. H. Christie, Sir Harry Pritchard, Sir William Gibson, Sir Randle Holme, Colonel Mackenzie Smith, Mr. F. Wyndham Hirst, Mr. R. W. A. Speed.

At the December court of the CITY OF LONDON SOLICITORS COMPANY held at Grocer's Hall, Mr. T. G. Lund, C.B.E., Secretary of The Law Society, was co-opted an Assistant. Mr. A. F. Steele, M.B.E., was co-opted an Additional Assistant upon his retirement from the office of Clerk to the Company.

The fifth annual dinner of the CHRIST CHURCH LAW CLUB was held at the Savoy Hotel on Thursday, 1st December, 1949. Those present included: Lord Porter (President), Messrs. D. A. Acland, J. C. Akers, Redmond Barry, K.C., B. W. S. Betts, Colonel W. E. Blizzard, R.E., Messrs. B. M. Bonfield, C. I. C. Bosanquet, Peter Brown, T. H. Bull, K. M. Byrne, R. B. Cantlie, G. S. Chapman, Lord Cherwell, F.R.S., Mr. A. W. Cockburn, K.C., Lord Justice Cohen, Messrs. R. A. H. Collinge, F. R. Collins, G. X. Constantinidi, R. Cordy, A. St. J. Davies, Anwyl Davis, Peter Donovan, Colin Duncan, J. F. Dynon, J. P. Eddy, K.C., C. W. Edwards, J. M. Evelyn, Sir Raymond Evershed, M.K., Messrs. A. J. J. Fisher, D. H. Gardam, Professor A. L. Goodhart, K.B.E., K.C., Messrs. S. N. Grant-Bailey, I. O. Griffiths, Vernon Harriss, J. F. Hewat, R. A. L. Hillard, R. C. Hoffman, Hoolahan, Geoffrey Howard, Muir Hunter, Lord Justice Jenkins, Messrs. R. A. S. Jerome, J. D. Keir, T. O. Kellock, W. Latey, G. F. Pitt Lewis, M. R. Lampard, G. H. Lloyd-Jacob, K.C., H. E. F. Lock, Thomas G. Lund, C.B.E., W. R. Lush, M. H. Lush, H. B. Magnus, John Maude, K.C., M.P., G. L. Myrddin-Evans, Frank Oppenheimer, Peter Pain, J. N. S. Penny, K. R. Ruppel, Russell Vick, K.C., Eric Sachs, K.C., Paul Sandlands, K.C., Sir Graham Savage, C.B., Messrs. J. H. A. Scarlett, T. R. F. Skemp, Mr. Justice Slade, Professor T. B. Smith, Messrs. David Sullivan, Neil Taylor, E. V. Thompson, C.B., B. J. Wakley, N. H. Ward, A. B. Whitelegge, G. B. Williams, D. I. Wilson, J. H. G. Woolcombe. The sixth annual dinner will be held at the Savoy Hotel on Thursday, 4th May next.

The annual meeting of the LOCAL GOVERNMENT LEGAL SOCIETY was held on 12th November and was preceded by a luncheon at which the President of The Law Society, Mr. H. Nevil Smart, C.M.G., O.B.E., J.P., was the principal guest.

In proposing the toast of the Local Government Legal Society the President said that assistant solicitors had up till now received the lion's share of the attention of the Salaried Solicitors' Committee of The Law Society. This was in a large measure due to the fact that assistant solicitors had organised themselves successfully and there was little doubt that the Local Government Legal Society was performing a valuable service for solicitors in general in the local government service.

The Law Society were, however, concerned with a wider picture, and through their Salaried Solicitors' Committee were seeking effectively to safeguard the interests of all salaried solicitors in the profession. He wished the Society every success during the forthcoming year.

Mr. G. T. Heckels, the retiring chairman of the Society, said in response, how glad he was to see the President of The Law

Society amongst them. The year of his chairmanship had seen the successful conclusion of the first efforts made by the Society in connection with the salaries of assistant solicitors. He felt sure that the part which The Law Society had played in achieving a minimum of Grade VA (£550) for the newly qualified solicitor and Grade VII (£635) two years later had been invaluable and he looked forward to a continuation of the happy relationships which had been effected between the two Societies. The primary aim of the Local Government Legal Society was to promote the professional and legal knowledge and the status of solicitors employed in local government. It was, on the other hand, useless to talk of status without relation to salaries and to this extent the preoccupation of the Society during its early years with salary matters was justifiable. During the past year, however, the branches of the Society had become increasingly aware that they must now really get down to the task of improving professional knowledge. The assistant solicitor in local government was a public servant and one of the purposes of the Society was to see that as a profession, solicitors in local government gave value for money. Most branches had made arrangements during the year under review for meetings at which subjects of professional importance had been discussed. These meetings and indeed occasions such as the annual luncheon were the chief methods by which an *esprit de corps* could be promoted and were not the least useful part of the Society's work.

At the annual meeting which followed the luncheon, the following officers were elected: Chairman, Mr. S. Lloyd Jones, Senior Assistant Solicitor, The Guildhall, Nottingham; Vice-Chairman, Mr. H. B. Sales, Deputy Town Clerk, Town Hall, Guildford; Hon. Secretary, Mr. J. K. Boynton, Senior Assistant Solicitor, County Offices, Derby; Hon. Treasurer, Mr. E. Thomas, Senior Assistant Solicitor, 10A Southernhay West, Exeter, Devon.

The subscription of the Society for the forthcoming year was continued at 15s. and an amendment to the Constitution was carried providing for the admission to associate membership of articulated clerks to solicitors in local government. Associate members will have no voting rights, but will be entitled to attend such meetings of the Society and branches of the Society as the council may determine. The meeting adopted the report of the council of the Society and the statement of accounts submitted therewith.

At the annual guest night of the UNITED LAW SOCIETY, the motion for the debate, which was held as usual in the Gray's Inn Common Room, on Monday, 12th December, 1949, was "That this House would approve of legislation controlling spendthrift husbands and fathers in the management of their property." The motion was proposed by Mr. J. H. Beazley and opposed by Mr. H. de Q. Willett. Other speakers in the course of a lively debate were Messrs. B. Baker, A. D. N. Jones, A. Garfitt, B. Lester, Miss V. Brown, Messrs. S. E. Redfern, J. J. Maddocks, O. T. Hill, L. Cullen, J. Bracewell, A. A. Huggins, Dr. G. L. Pett, Mr. G. D. Glennister and Dr. T. Kemp Homer. The motion was lost by 8 votes to 15, with a number of abstentions.

Proposing the toast to the BIRMINGHAM LAW STUDENTS' SOCIETY at its recent annual dinner, the Lord Chief Justice (Lord Goddard) likened common law to a great tree which threw out branches sheltering the lives of British people. Certain dead wood was found from time to time, he said, and let that be cut, but with care. "Many suggestions are made for the improvement—so it is said—of common law, but after fifty-one years in the law I am not convinced that everything that is a change is necessarily a reform. Beware how you prune the roots of common law. If you prune too hard the tree may perish, and you will find, as other countries in Europe have found, that the law is no longer the protector of the liberty, the property, or even the lives of the subjects."

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